

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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74-1062 74-1816

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United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA and MORTIMER TODEL,
as Receiver of the funds, assets and property of Roosevelt
Capital Corporation,

Plaintiffs-Appellees,

against

FRANKLIN NATIONAL BANK,

Defendant-Appellant.

APPEAL FROM MEMORANDUM DECISION AND ORDER AND
JUDGMENT OF THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

JOINT APPENDIX

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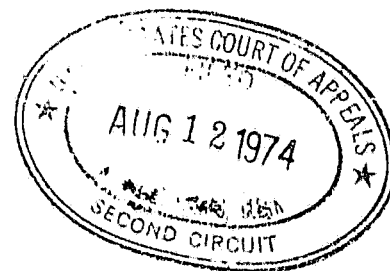
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Plaintiff-Appellee, Pro Se

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PAGINATION AS IN ORIGINAL COPY

JOINT APPENDIX

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1a -2a

Docket Entries

439

DOCKET

APPRA

IND. 1

TITLE OF CASE

ATTORNEYS

UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of the
funds, assets and property of
ROOSEVELT CAPITAL CORPORATION

For Plaintiff:

JOSEPH P. HOEY

U. S. ATTY

vs.

For Defendant:

FRANKLIN NATIONAL BANK

KAYE, SCHOLER, FIERMAN, HAYS &
HANDLER, ESQS., 425 Park Ave

New York, N.Y. 10022 (PL 9-
4800)

BASIS OF ACTION: PURSUANT TO 28 U.S.C.
Sec. 1345 and 15 U.S.C. Sec. 687 (c)

Seeks: \$320,000.00

JURY TRIAL CLAIMED

ON

[illegible]

ABSTRACT OF COSTS

RECEIPTS, REMARKS, ETC.

[illegible]

670 432

UNITED STATES OF AMERICA, and MORTIMER TODEL, as
Receiver of the funds, etc., of ROOSEVELT CAPITAL CORP.

DATE	FILINGS--PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
5-11-67	Complaint filed. Summons issued.	1
5-12-67	Summons returned and filed. Deft served on 5/12/67.	2
5-29-67	Order to show cause with proof of service filed, to vacate deft's notice to take deposition of Bernard L. Boutin and Robert C. Moot or taken in Washington, D.C. etc. pursuant to Rule 30(b). (ret May 31, 1967)	3
5-31-67	Before WEINSTEIN, J.- Hearing on motion to vacate deft's notice to take deposition of Bernard L. Boutin and Robert C. Moot or taken in Washington, D.C. etc. - Motion argued - Decision reserved.	
5-31-67	Deft's notice to take the deposition of The admin. of the Small Business Admin., Bernard L. Boutin, ad Deputy Admon, Robert C. Moot on May 31, 1967 filed.	4
5-31-67	Deft's notice to take the deposition of Mortimer Todel on 6/2/67 filed.	5
6-2-67	By WEINSTEIN, J.- Order filed extending time for deft to answer complaint from 6/1/67 to July 3, 1967. (1) (P/C mailed to attys)	6
6-2-67	By WEINSTEIN, J.- Order filed adjourning the deposition of Mortimer Todel to July 6, 1967. (P/c mailed to attys)	7
6-2-67	By WEINSTEIN, J.- Order filed adjourning the depositions of Bernard L. Boutin and Robert C. Moot to June 30, 1967. (P/C mailed to attys)	8
6-29-67	By DOOLING, J.- Order filed adjourning the deposition of Pltff U.S.A. by deft to Sept 12, 1967 and that the time of deft to answer complaint is extended from 7/3/67 to 9/15/67 and the deposition of Pltff Mortimer Todel by deft is adjourned to 9/19/67 (P/C mailed to attys)	9
9-12-67	By ZAVATT, CH. J. - Consent order filed that the deposition of Pltff U.S.A. is adjourned until 11/8/67. Further Ordered that the time of Deft. to answer is extended to 11/10/67. Further Ordered that the deposition of Pltff. MORTIMER TODEL, Receiver, is extended until 11/10/67. (See Memo on Order) (P/C mailed to Attys.)	10
11-8-67	Order to show cause with affid of mailing filed, pursuant to Rule 39(b) to vacate deft's notice of deposition of Bernard L. Boutin and Robert C. Moot etc. (ret Nov 22, 1967)	11

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
11-9-67	By ZAVATT, CH. J.- Order filed adjourning the deposition of Pltff Mortimer Todel to 12/3/67 and the time of deft to answer complaint is extended from 11/10/67 to 12/3/67. (P/C mailed to attys)		
11-16-67	Notice of motion pursuant to Rule 34 filed, requiring plttf U.S.A. to produce and permit deft to inspect etc. (Nov 22, 1967)		
11-21-67	Memorandum of law filed, in support of Gov't motion to strike notice of deposition etc.		
11-22-67	Before WEINSTEIN, J.- Hearing on motion requiring plttf U.S.A. to produce and permit deft to inspect etc. - Motion argued - Motion granted except as to U.S. atty communications and unrelated references are to be blocked out.		
11-22-67	Before WEINSTEIN, J.- Hearing on show cause to vacate deft's notice of deposition of Bernard L. Boutin and Robert C. Moot etc. - Motion argued - Motion granted but paragraph #8 of complaint is stricken.		
11-29-67	By WEINSTEIN, J.- Order filed granting plttf's motion vacating deft's notice of deposition of Bernard L. Boutin and Robert C. Moot, however, that paragraph 8 of complaint is stricken, and that deft's motion requiring plttf to produce and permit deft to inspect and copy all writings or papers etc is granted etc. (P/C mailed to attys)		
12-8-67	By MISHLER, J.- Order filed that the deposition of plttf Mortimer Todel by deft is adjd to Jan 5, 1968 and the time of deft to answer complaint is extended from 12/8/67 to Jan 5, 1968. (P/C mailed to attys) (1)		15
12-18-67	Deft's notice to take the deposition of plttf by R.J. Connolly on 12/29/67 filed.		16
1-5-68	By DOOLING, J.- Order filed that the deposition of plttf Mortimer Todel by deft is adjd to Feb 2, 1968 and the time of deft to answer complaint is extended from 1/5/68 to Feb 2, 1968. (2) (P/C mailed to attys)		17
2-2-68	By DOOLING, J.- Order filed that the deposition of plttf Mortimer Todel, is adjd to April 2, 1968 and the time of deft to answer complaint is extended from 2/2/68 to 4/2/68. (3) (P/C mailed to attys)		18

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES		AMOUNT PAID BY PLAINTIFF FOR EMPLOYMENT RETAINER
		PLAINTIFF	DEFENDANT	
4-2-68	By MISHLER, J.- Order filed that the deposition of plttf Mortimer Todel is adjourned to April 9, 1968 and the time of deft to answer complaint is extended from 4/2/68 to April 9, 1968. (4) (P/C mailed to attys)			20
4-9-68	ANSWER of deft filed. (srvd 4/9/68)			21
4-10-68	By MISHLER, J.- Order filed that the deposition of plttf Mortimer Todel adjourned to May 7, 1968 filed. (P/C mailed to attys) (5)			22
4-30-68	AMENDED ANSWER of deft filed. (affid of srv by rail on 4/29/68)			23
5-9-68	By ROSLING, J.- Order filed adjourning the deposition of plttf Mortimer Todel to June 18, 1968.			24
6-6-68	Plttf U.S.A.'s interrogatories to deft filed.			25
6-26-68	By WEINSTEIN, J.- Order filed extending the time of deft to answer plttf U.S.A.'s interrogatories to 7/8/68. (P/C mailed to attys) (1)			26
7-10-68	By WEINSTEIN, J.- Order filed extending time of deft to answer plttf U.S.A.'s interrogatories from 7/8/68 to July 22, 1968. (P/C mailed to attys) (2)			27
7-24-68	By TRAVIZ, J.- Order filed extending time of deft to answer plttf U.S.A.'s interrogatories from 7/22/68 to Aug 5, 1968) (P/C mailed to attys) (3)			28
7-5-68	Deft's answers to plttf's interrogatories filed.			29
2-18-69	Deft's supplementary answer to plttf U.S.A.'s interrogatories filed.			30
9-2-69	Before ROSLING, J.- Case called - adjd for Jan 2, 1970 for assignment for trial.			
1-9-70	Before ROSLING, J.- Case call & adjd to 2-13-70 at 2:15 P.M.			
2-13-70	Before ROSLING, J.- Case called & adjd to 5-8-70 at 2:15 P.M.			
5-8-70	Before ROSLING, J.- Case called & adjd to Sept 18, 1970 at 2:15 P.M.			
9-18-70	Before ROSLING, J.- Case called & adjd to 3-5-71 at 2:15 P.M.			
3-5-71	Before ROSLING, J.- Case called - adjd to 10-8-71 at 2:15 P.M.			
10-8-71	Before ROSLING, J.- Case called adjd to 2-11-72 at 2:15 P.M.			
2-18-72	Before ROSLING, J.- Case called - adjd to 6-2-72 at 2:15 P.M.			
6-2-72	Plttf U.S.A.'s request for production of documents filed.			31
6-2-72	Plttf U.S.A.'s notice to take the deposition of deft on 6-20-72 filed.			32
6-2-72	Before ROSLING, J.- Case called - adjd to 9-22-72 @ 2:15 P.M.			

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CIVIL DOCKET U. S. A. & ANO V. FRANKLIN NATIONAL BANK

DATE	FILINGS—PROCEEDINGS	CLERK'S FILE	PLAINTIFF	DEFENDANT
6-6-72	Pltff's notice to take the deposition of Patrick Mastrorardo on 6-20-72 filed.			33
6/22/72	Pltffs' request for production of documents filed.			34
6/22/72	Pltff's (U.S.A.) notice to take deposition of deft filed.			35
7-5-72	Deft's responds to pltff U.S.A.'s request for production of documents filed.			36
7/27/72	Deft's response to pltff's (U.S.A.) request for production filed.			37
8/7/72	Pltff's notice to take deft's deposition filed.			38
8/14/72	Notice of motion & memo of law ret 8/16/72 for an order compelling deft's production filed. (Marked withdrawn by pltff-see endorsement on bottom of motion paper)			39/40
8-23-72	Deft's interrogatories to Mortimer Todel filed.			41
8-23-72	Deft's request for production of documents filed. (U.S.A.)			42
8-23-72	Deft's interrogatories to U.S.A. filed.			43
8-23-72	Deft's request of Mortimer Todel, for production of documents filed.			44
9-7-72	Deft's notice to take the deposition of pltff on 9-21-72 filed.			45
9-7-72	Deft's notice to take the deposition of Mortimer Todel on 9-20-72 filed.			46
9-19-72	Pltff U.S.A.'s notice of objection to notice of deposition filed.			47
9-22-72	Before ROSLING, J.- Case called - Marked ready for trial, Notice to be given after 1-5-73 at 2:15 P.M.			
11/2/72	Pltff's (USA) request for admissions filed.			48
11/2/72	Pltff's (USA) request for admissions filed.			49
11/2/72	Pltff's (USA) answers to deft's interrogatories filed.			50
12/5/72	Deft's response to pltff's request for production filed.			51
12/5/72	Deft's response to pltff's request for admissions filed.			52
12/22/72	Deft's interrogatories to pltffs USA & TODEL filed			53
1-25-73	Notice to take deposition of SIDNEY TOLMAGE ret 2-6-73 filed.			54
1-25-73	Notice to take deposition of SAMUEL STONE ret 2-7-73 filed.			55
3-9-73	Affidavit of Julius Berman requesting adjournment of trial filed.			56
3-13-73	Before: ROSLING, J. Case called-adjd. to March 14 D. C. 110 1973 at 2:15 p.m.			

DATE	FILINGS-PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
3-14-73	Before ROSLING, J. - Case called. No appearances. None required as stated by the court. Adj'd to 3-15-73 at 10 A.M.		
3-16-73	Before ROSLING, J. Case Called-Marked ready-subject to the case on trial.		
5-16-73	Deposition of Franklin National Bank by Patrick Mastronardo filed.(3-26-65)		57
5-16-73	Deposition of Patrick Mastronardo on 6-22-72 filed.		58
5-16-73	Deposition of Sidney Tolmage on 3-6-73 filed.		59
5-16-73	Notice of motion and memo of law for summary judgment to plttf ret 6-1-73 filed.		60
5/17/73	Pltffs. answers to defts. interrogatories filed.		61/62
6/1/73	Affidavit of Patrick J. Mastronardo & deft's. memo of law in to plttfs. motion for summary judgement filed.		63
6-12-73	Pltffs' memorandum of law in reply to deft's memorandum and submission in opposition to plttfs' motion for summary judgment filed.		64/65
6-19-73	Copy of letter of Julius Berman dated 6-18-73 re: reply memorandum filed by plttfs in connection with their motion for summary judgment. filed.		66
7-2-73	Before JUDD, J. - Case called and referred to Judge Moore.		67
11-28-73	By MOORE, C.J. - Memorandum and order dtd 11-28-73 granting summary judgment in favor of plttfs., etc. filed. (copies mailed to attys) JAW		
11-28-73	JUDGMENT dtd 11-28-73 granting judgment in favor of plttfs and against defts Pltffs to recover of defts the sum of \$305,000.00 together with interest and costs, etc filed.		68
12-7-73	Notice of appeal filed. Duplicate of appeal mailed to C of A & plttfs. jn		69
12-7-73	Bond undertaking on appeal filed.		70
12-10-73	Notice of filing of undertaking on appeal filed.		71
12/10/73	Affidavit of Service filed.		72
12-11-73	Memorandum of law in support of plttf's motion to amend judgement filed.		73
12-11-73	Notice of motion ret. 12-28-73 before Judge Moore, for an order correcting the judgment of this court, etc. filed.		74
12-26-73	Affidavit of Julius Berman filed.		75
12-27-73	Judge-Moore advised Clerk's Office by telephone that motion ret 12-28-73 will not be heard. May be heard at later date. (attys notified by phone) JAW		76

Continued

U.S.A., et al vs. FRANKLIN NATIONAL BANK

DOCKET

FILING PROCEEDINGS

CLERK'S FEES

AMOUNT

PAID BY

1-74 By MOORE, J. - Order dtd 1-11-74 extending time to docket
the appeal to 3-7-74 filed. 77

10-74 By MOORE, C.J. - Order dtd 5-9-74 granting plaintiff's applica-
tion to amend judgment. Filed. (copies mailed to atty.).

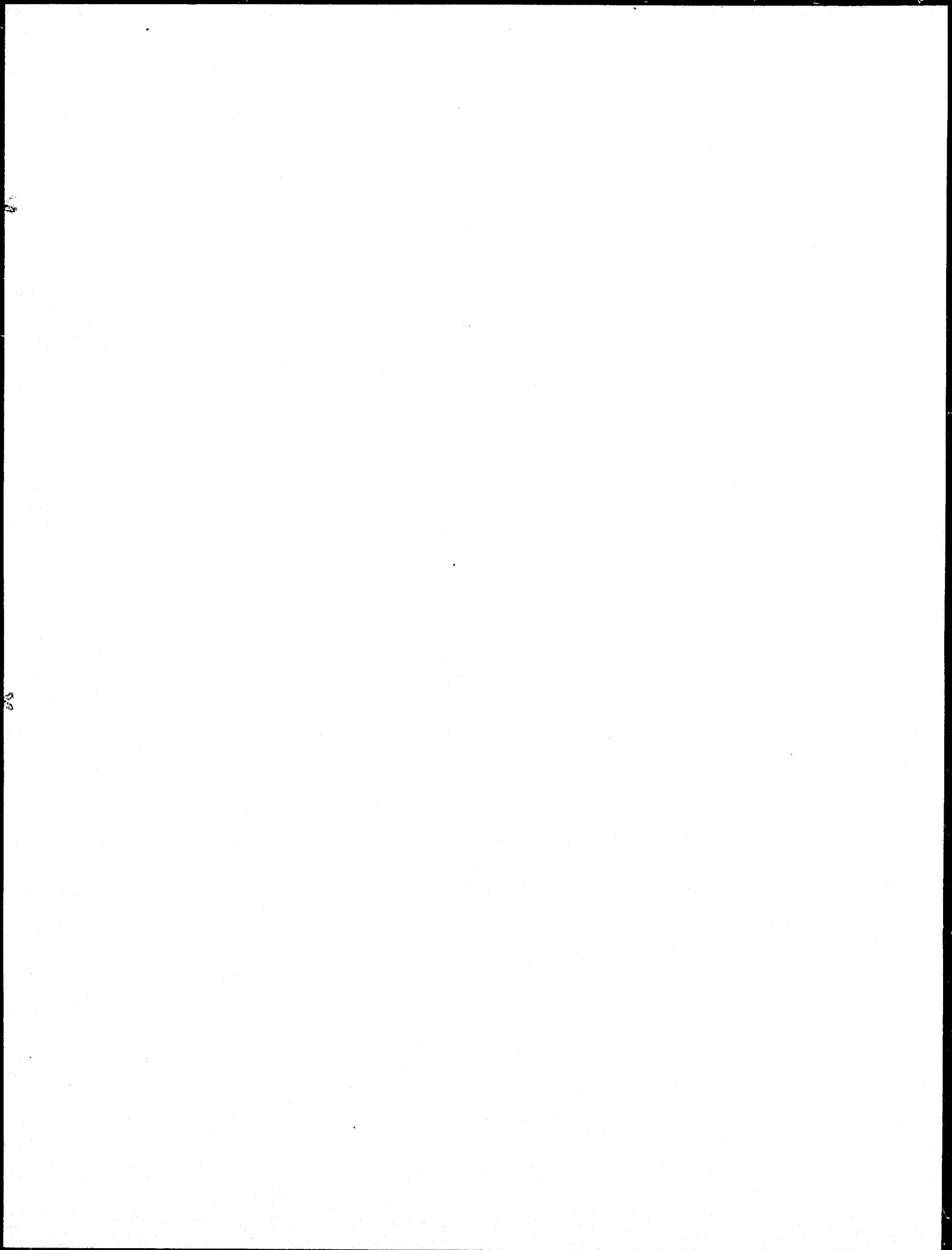
12-74 SUPPLEMENT dtd 5-10-74 vacating judgment entered on 11-28-74,
and granting summary judgment in favor of plaintiff, and that
plaintiffs are awarded such amount as shall satisfy the judgment
of the U.S.A. against Roosevelt Capital Corporation. Filed.
(copies mailed to atty.). 65C-162(S.D.N.Y.) with interest
from 2-8-64.

5-74 Notice of appeal filed. Copy mailed to C of A. 80

6-27-74 By MOORE, C.J. - Order dtd 6-25-74 terminating Undertaking
on Appeal, etc. filed. 81

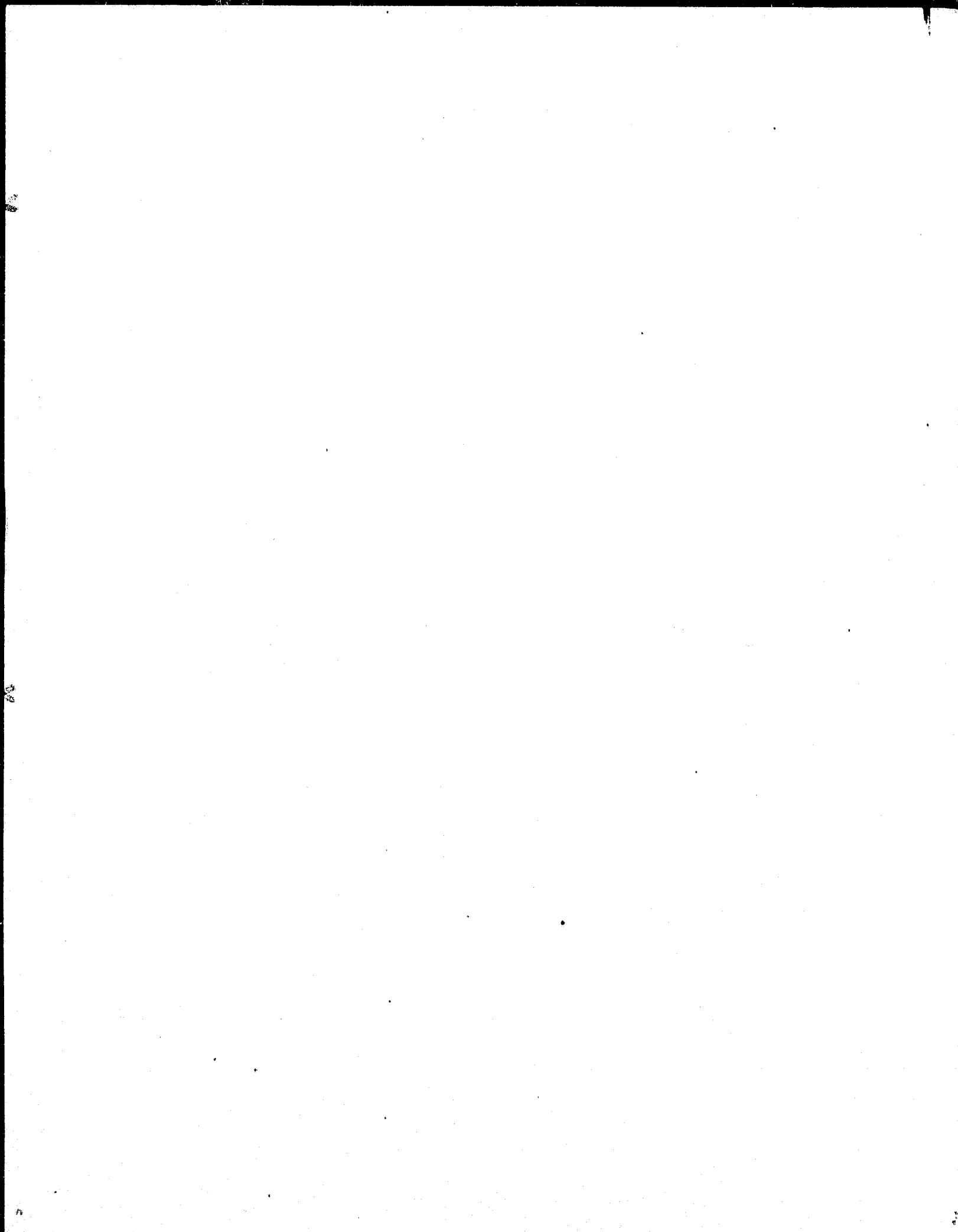
7-1-74 Above record on appeal certified and handed to Carmine S.
Visone for delivery to the C of A.

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7/1/74
LEWIS ORGEL,
DEPUTY CLERK
BY



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Complaint, Filed on May 11, 1967



CS:HIS:emm
Civ. 670384

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

MAY 11 2 06 PM '67

-----X
UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property of
ROOSEVELT CAPITAL CORPORATION,

CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

: Civil Action

: No.

Plaintiffs

-against-

FRANKLIN NATIONAL BANK,

Defendant
-----X

67C 439

Plaintiffs, UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver of the funds, assets and
property of ROOSEVELT CAPITAL CORPORATION, for their
complaint against the above named defendant, allege as
follows:

1. Plaintiff MORTIMER TODEL is the duly
appointed Receiver of the funds, assets and property of
ROOSEVELT CAPITAL CORPORATION, a New York corporation
being appointed by order of the Honorable Richard H.
Levet, United States District Judge, Southern District of
New York, on March 5, 1965, upon application of the
UNITED STATES OF AMERICA, in an action entitled United
States of America v. Roosevelt Capital Corporation, 65
Civ. 162, Southern District of New York.

2. (a) This Court has jurisdiction over the
claims of plaintiff UNITED STATES OF AMERICA, pursuant
to 28 U.S.C. §1345 and 15 U.S.C. §687 (c).

(b) This Court has jurisdiction over the
claims of plaintiff MORTIMER TODEL pursuant to 28 U.S.C.
§1331 and on the ground that MORTIMER TODEL institutes
this action in his capacity as duly appointed Receiver,

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in order to accomplish the ends sought and directed in accordance with such appointment.

3. Defendant FRANKLIN NATIONAL BANK is a corporation transacting business within the Eastern District of New York.

4. On February 8, 1962, ROOSEVELT CAPITAL CORPORATION, a New York Corporation, for value received, issued a debenture in the principal sum of \$150,000, with interest at the rate of five (5%) percent, to the Small Business Administration, an agency of plaintiff, UNITED STATES OF AMERICA, no part of which sum has been paid and which remains presently due and outstanding, together with interest thereon of five (5%) percent per annum from said date.

5. On or about May 14, 1964, defendant, FRANKLIN NATIONAL BANK issued two bank checks in the respective amounts of \$42,000 and \$118,000 payable to one Sidney Tolmage.

6. The amounts of said checks were thereafter paid, and debited to an account of ROOSEVELT CAPITAL CORPORATION maintained by FRANKLIN NATIONAL BANK.

7. Such debit, and the payment of said checks, and collection of said amounts, from funds of ROOSEVELT CAPITAL CORPORATION, was improper and unlawful and FRANKLIN NATIONAL BANK has thereby become liable to ROOSEVELT CAPITAL CORPORATION in the sum of \$160,000 and/or to the UNITED STATES OF AMERICA in the sum of \$150,000, together with accrued interest.

6. The acts alleged in paragraphs "5", "6" and "7" of this complaint were committed at the direction of certain stockholders and directors of ROOSEVELT CAPITAL CORPORATION in furtherance of a scheme to fraudulently and unlawfully disburse and waste the assets of said corporation, and to defraud the UNITED STATES OF AMERICA, presently the sole creditor of said corporation.

WHEREFORE, plaintiffs demand judgment as follows

1. Against FRANKLIN NATIONAL BANK in the sum of \$160,000 in favor of MORTIMER TODEL, as Receiver, of the funds, assets and property of ROOSEVELT CAPITAL CORPORATION; or
2. Against FRANKLIN NATIONAL BANK in the sum of \$150,000 in favor of the UNITED STATES OF AMERICA, and against FRANKLIN NATIONAL BANK in the sum of \$10,000 in favor of MORTIMER TODEL as Receiver, of the funds, assets and property of ROOSEVELT CAPITAL CORPORATION; or
3. Such other and further judgment, remedy or relief, in favor of plaintiffs, individually or jointly, against FRANKLIN NATIONAL BANK, as to the Court may appear just and proper in the premises
4. Together with interest according to law and the costs and disbursements of this action.

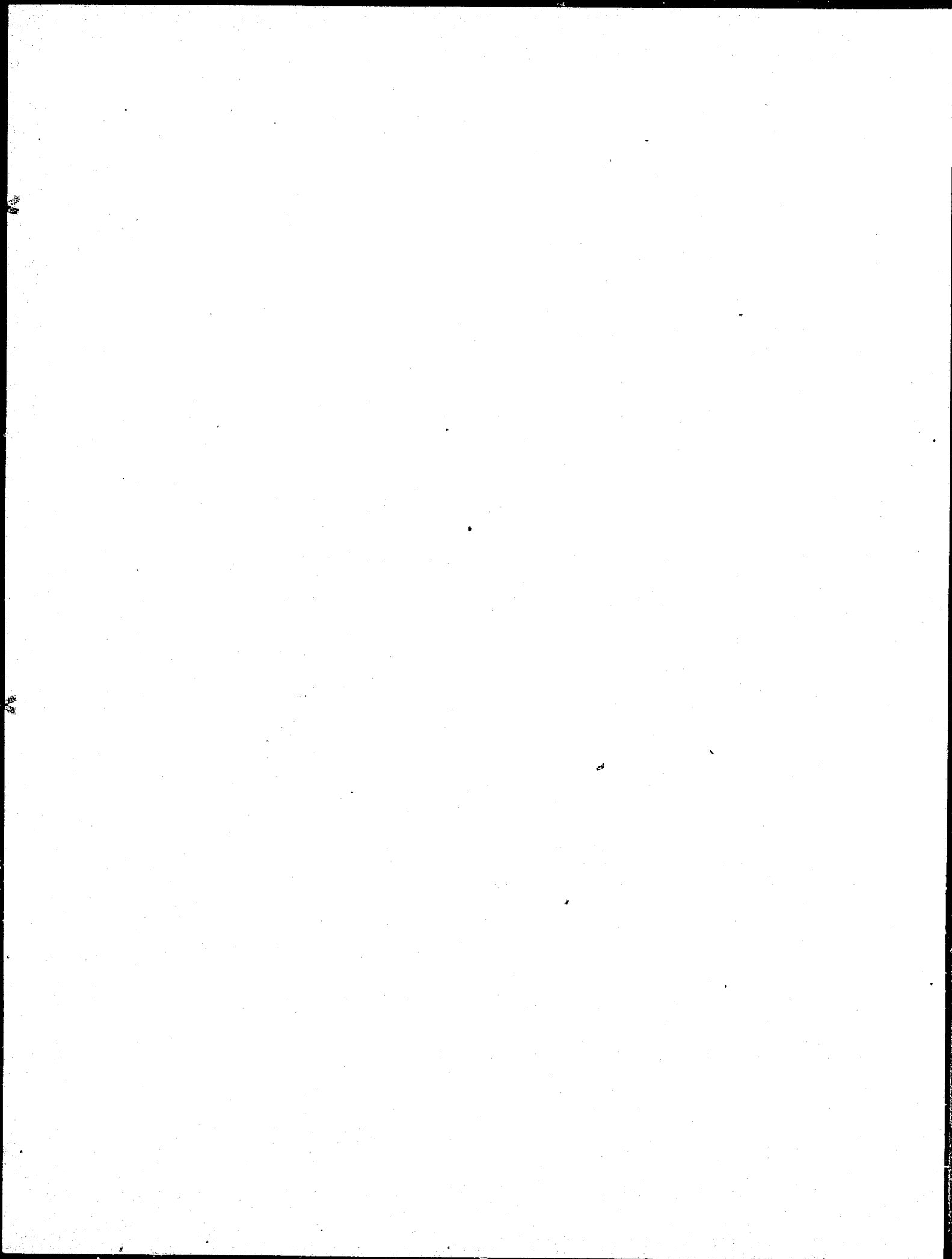
Dated: Brooklyn, New York
May 10, 1967

Yours, etc.

JOSEPH P. HOEY
United States Attorney
Eastern District of New York
Attorney for UNITED STATES

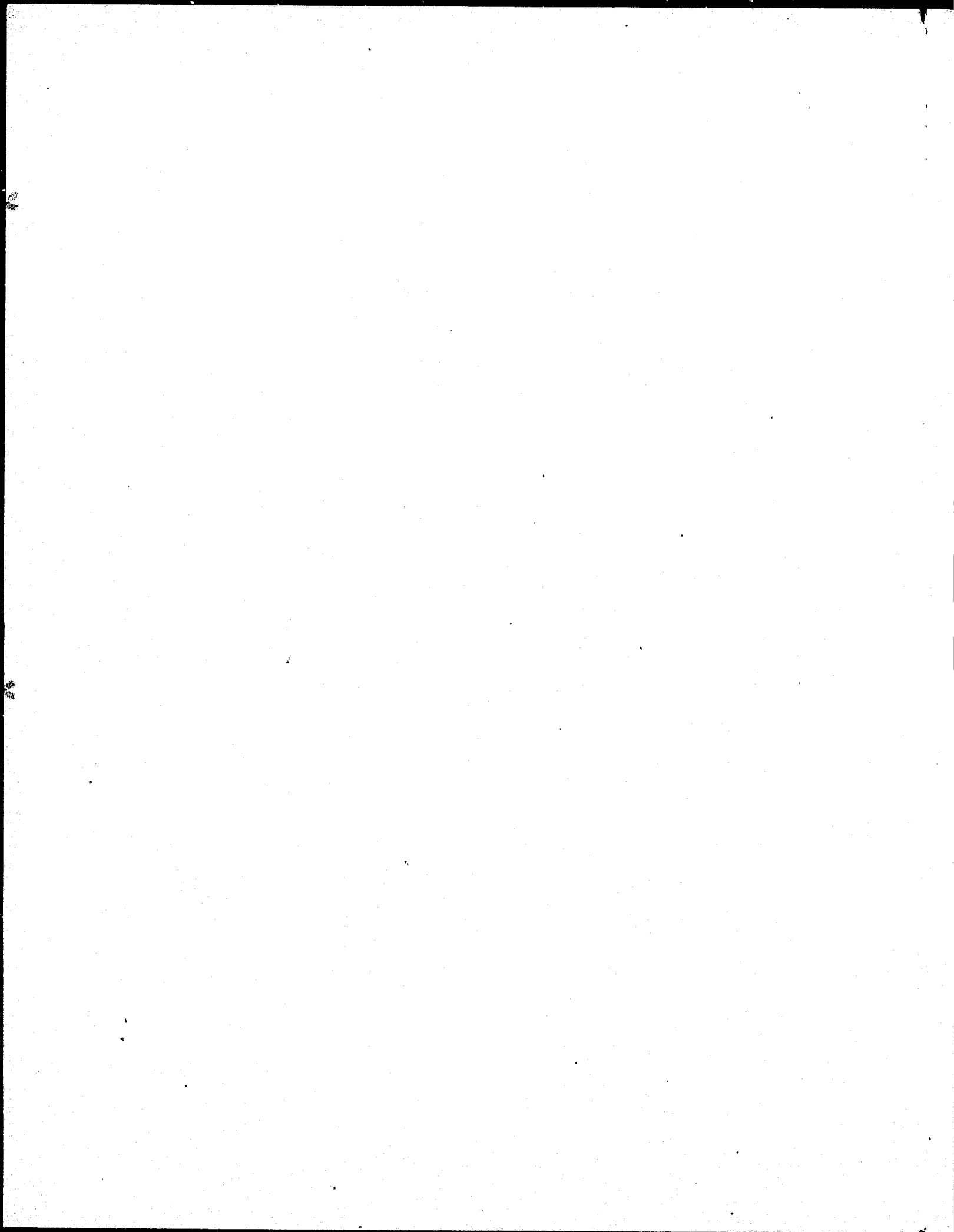
By: Howard L. Stevens
HOWARD L. STEVENS
Assistant U.S. Attorney

Mortimer Todel
MORTIMER TODEL, as
Receiver of the funds,
assets and property of
ROOSEVELT CAPITAL CORPORATION
Plaintiff Pro Se
39 Broadway
New York, New York



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**Order (Weinstein, J.) Filed on November 29, 1967,
Striking Paragraph 8 of the Complaint**



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property
of ROOSEVELT CAPITAL CORPORATION,

Plaintiffs, :

-against- :

FRANKLIN NATIONAL BANK, :

Defendant. :

ORDER

67 Civ. 439

Plaintiff United States of America having moved, by order to show cause dated May 26, 1967, to vacate defendant's notice for taking the deposition of said plaintiff, by certain officers, employees and agents of said plaintiff, and for other and further relief, pursuant to Rule 30(b) of the Federal Rules of Civil Procedure, and said motion having duly come on for hearing on May 31, 1967, and decision having been reserved thereon, and said plaintiff having further moved on additional papers, by order to show cause dated November 7, 1967, for similar relief, and defendant having moved, on November 15, 1967, for an order requiring said plaintiff, pursuant to Rule 34 of said Federal Rules, to produce and to permit defendant to inspect and copy certain documents, and all said

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motions having duly come on for hearing on November 13, 1967,

NOW, upon reading and filing the complaint herein, dated May 10, 1967, and defendant's notice for the taking of said plaintiff's deposition, dated May 24, 1967, with proof of due service thereof, and said plaintiff's motion, brought on by order to show cause dated May 26, 1967, and the affidavit of Howard L. Stevens, sworn to May 26, 1967, with proof of due service thereof, in support of said motion, and the affidavit of Sheldon Oliensis, sworn to May 31, 1967, with proof of due service thereof, in opposition thereto, and upon reading and filing said plaintiff's further motion, brought on by order to show cause dated November 7, 1967, and the affidavits of Howard L. Stevens, sworn to November 7, 1967, and Robert C. Moot, sworn to October 13, 1967, with proof of due service thereof, in support of said motion, and the affidavit of Sheldon Oliensis, sworn to November 20, 1967, and the exhibits thereto, with proof of due service thereof, in opposition to said motion, and upon reading and filing defendant's notice of motion, dated November 15, 1967, and the affidavit of Sheldon Oliensis, sworn to November 15, 1967, and the exhibits thereto, with proof of due service thereof, in support of defendant's said motion, and after hearing Joseph P. Hoey, Esq., United States Attorney, by Howard L. Stevens, Esq., Assistant United States Attorney,

in support of said plaintiff's motions and in opposition to defendant's motion, and Kaye, Scholer, Fierman, Hays & Handler, attorneys for defendant, by Sheldon Ollensis, Esq. of counsel, in opposition to said plaintiff's motions and in support of defendant's motion, it is

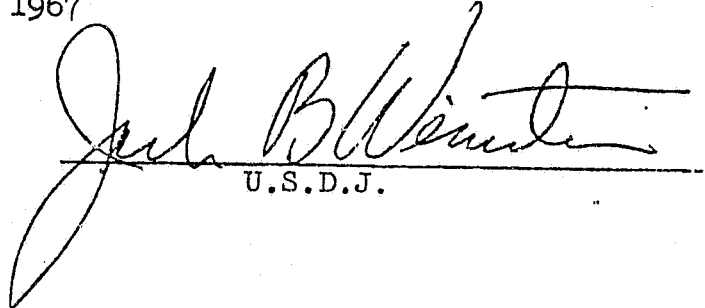
ORDERED, that said plaintiff's motions be, and the same hereby are, granted, and defendant's notice, dated May 24, 1967, for taking the deposition of said plaintiff, by Bernard L. Boutin and Robert C. Moot, be, and the same hereby is, vacated, provided, however, that Paragraph 8 of the complaint herein be, and it hereby is, stricken; and it is further

ORDERED, that defendant's motion be, and the same hereby is, granted to the extent hereinbelow set out, and plaintiff shall produce and permit defendant to inspect and copy all writings or papers of any nature whatsoever, during the period from April 1, 1964 to date, without limitation as to source or authorship, in said plaintiff's custody or control, whether in said plaintiff's possession or not, which constitute, relate or refer in any way to the sale or transfer of stock or assets of Roosevelt Capital Corporation on or about May 14, 1964, including, without limitation, the memoranda relating thereto prepared by Clarence A. Levine, except communications to or from the United States Attorney and communications to or from the General Counsel of the Small Business

22a

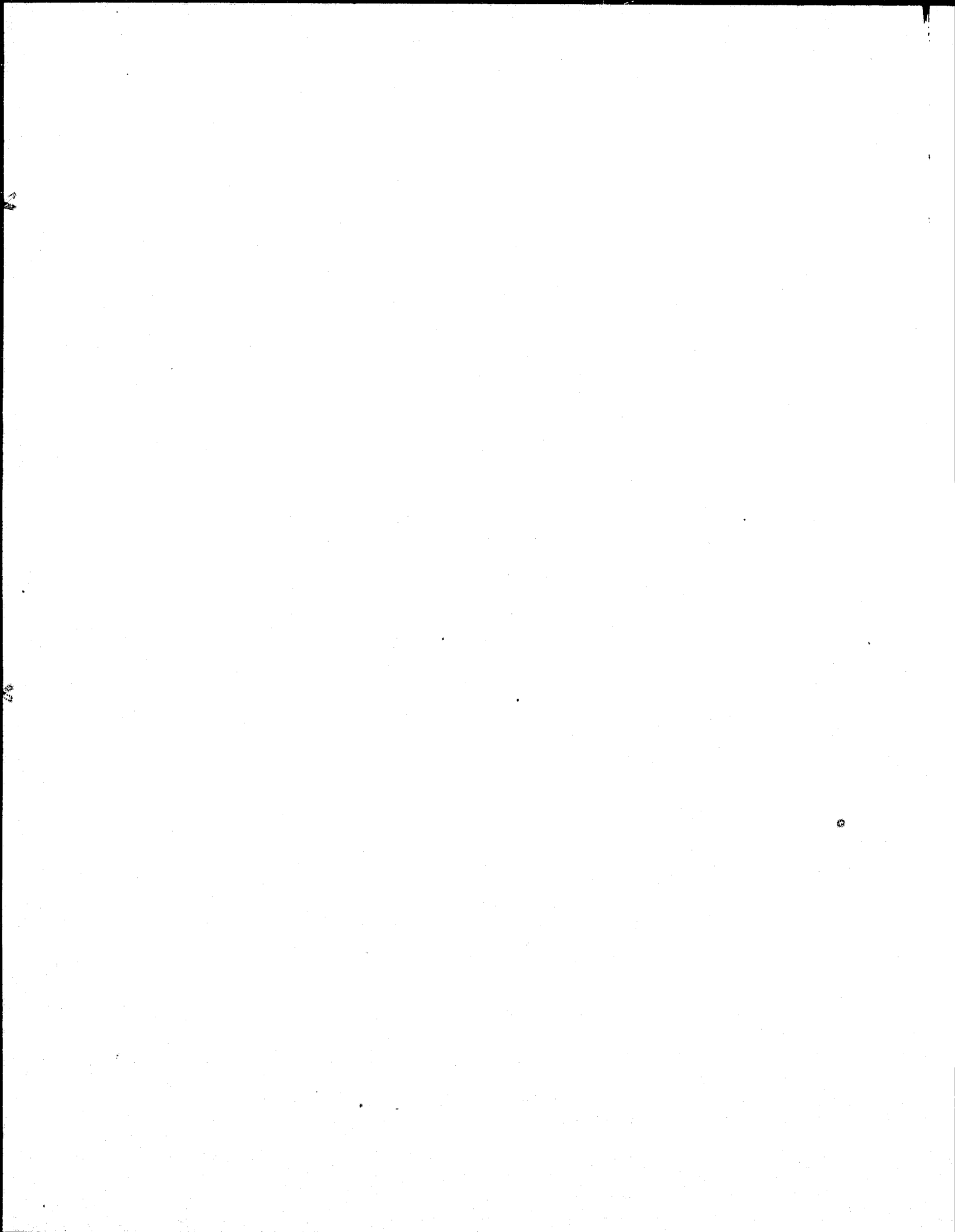
Administration, provided, however, that irrelevant material, unrelated to said sale or transfer, may be deleted from such documents prior to their production, and provided further that material relating to Peter Francis Crosby, Ray E. Pierson, S. Lonnie Olanow, Samuel Stone, Stewart Wallen, Joseph Calise, Charles Shapiro, Alexander Eltman, Sidney Tolmage and Arthur V. Briskin shall not be deleted therefrom.

Dated: Brooklyn, New York,
November 29, 1967


U.S.D.J.

23a

Amended Answer, Filed on April 30, 1968



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN CL. N.Y.
U.S. DIST.

APR 30 1968

UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property
of ROOSEVELT CAPITAL CORPORATION,

TIME A.M. /

P.M. /

Plaintiffs,

AMENDED
ANSWER

-against-

FRANKLIN NATIONAL BANK,

67 Civ. 439

Defendant,

Defendant, by its attorneys, Kaye, Scholer,
Fierman, Hays & Handler, as and for its amended answer
to plaintiffs' complaint herein, respectfully shows to
this Court and alleges:

FIRST: Admits, upon information and belief,
the allegations contained in Paragraph "1" of the com-
plaint.

SECOND: Denies knowledge or information
thereof sufficient to form a belief as to each and
every allegation contained in Paragraphs "2" and "4"
of the complaint.

THIRD: Denies each and every allegation
contained in Paragraphs "5" and "6" of the complaint,
except admits that on or about May 14, 1964, defendant
Franklin National Bank issued on behalf of, and at the
special instance and request of, Roosevelt Capital
Corporation two bank checks in the respective amounts

(23)

of \$42,000 and \$118,000 payable to one Sidney Tolmage and debited the account of said Roosevelt Capital Corporation maintained at defendant Franklin National Bank with such amounts.

FOURTH: Denies each and every allegation contained in Paragraph "7" of the complaint.

FOR A FIRST DEFENSE AGAINST PLAINTIFFS

The complaint fails to state a claim against the defendant upon which relief can be granted.

FOR A SECOND DEFENSE AGAINST PLAINTIFF
UNITED STATES OF AMERICA

The plaintiff United States of America lacks capacity to maintain this action, inasmuch as its interests in the subject matter are already represented in this action by plaintiff Mortimer Todel, who was appointed Receiver of the funds, assets and property of Roosevelt Capital Corporation by an order of the United States District Court for the Southern District of New York, duly filed on or about March 5, 1965, and by a judgment of the said Court duly filed on or about August 3, 1966. Said order and judgment were granted in an action brought by plaintiff United States of America, entitled United States of America against Roosevelt Capital Corporation and Ray Pierson, 65 Civ. 162.

WHEREFORE, defendant prays for judgment herein

27a

dismissing the complaint herein, together with the
costs and disbursements of this action.

KAYE, SCHOLER, FIERMAN, HAYS &
HANDLER

Attorneys for Defendant
Office and P.O. Address
425 Park Avenue
New York, New York 10022
Plaza 9-8400

By

Arthur Heller

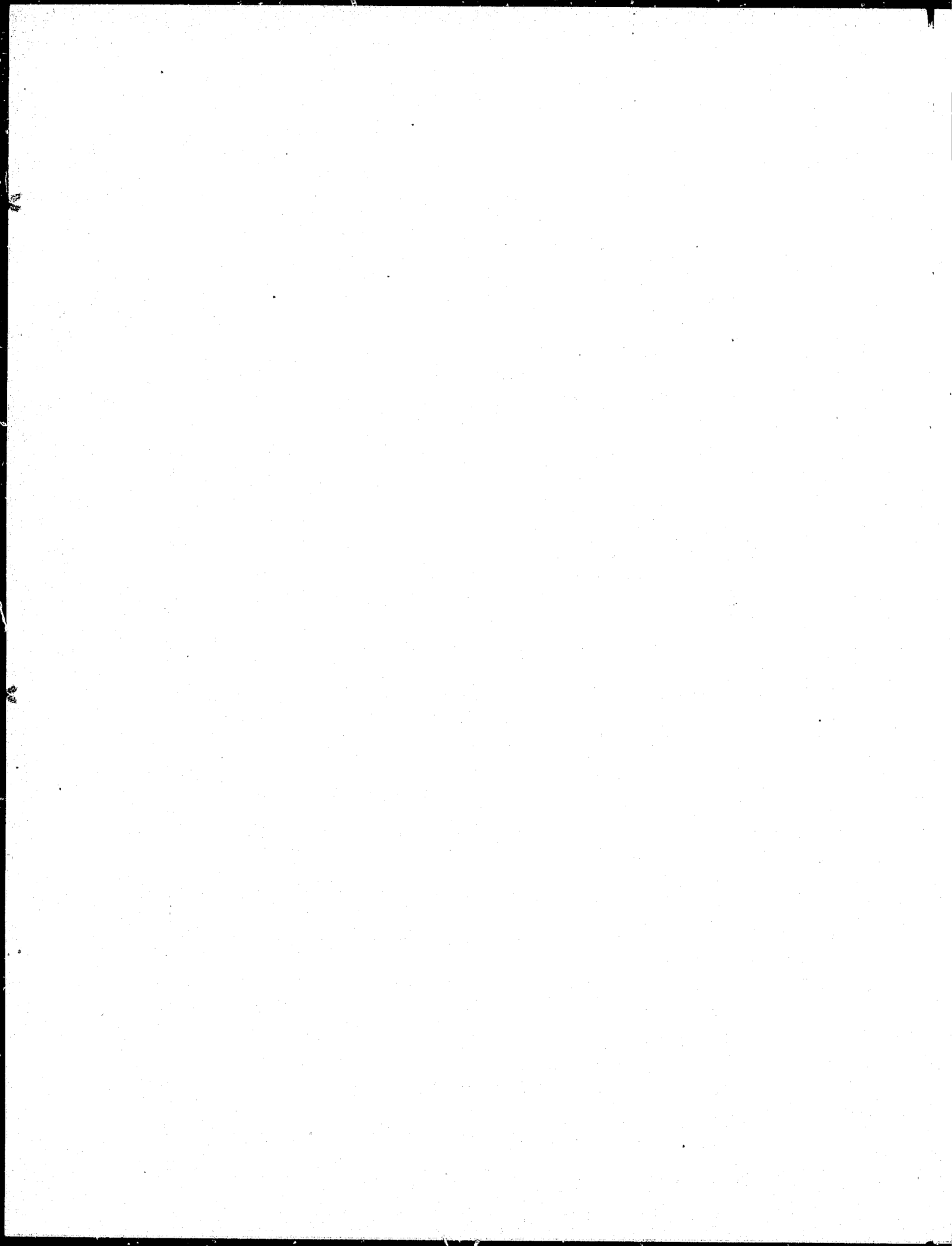
A Member of the Firm

280

29a

**PLAINTIFFS' PAPERS IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT, FILED ON MAY 16, 1973**

**Notice of Motion for Summary Judgment,
Dated May 15, 1973**



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X

UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property of
ROOSEVELT CAPITAL CORPORATION,

NOTICE OF MOTION

Plaintiffs,

-against-

Civil Action
No. 67 C 439

FRANKLIN NATIONAL BANK,

Defendant.
-----X

S I R S :

PLEASE TAKE NOTICE that, upon the annexed affidavit of HENRY A. BRACHTL, the annexed statement pursuant to Rule 9(g) of the General Rules of this Court, and all prior proceedings herein, plaintiff UNITED STATES OF AMERICA will move this Court before the Honorable Leonard P. Moore, Circuit Judge, at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 1st day of June, 1973, at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order granting summary judgment to plaintiff UNITED STATES OF AMERICA and against defendant FRANKLIN NATIONAL BANK, pursuant to Rule 56 of the Federal Rules of Civil Procedure, on the grounds that there is no genuine issue as to any material fact and that plaintiff UNITED STATES OF AMERICA is entitled to judgment as a matter of law, and for such other and further relief as

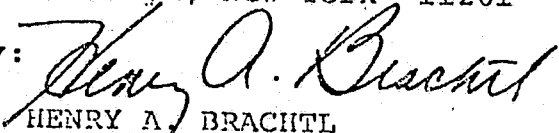
this Court shall deem just and proper.

Dated: Brooklyn, New York
May 15, 1973

Yours, etc.,

ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Plaintiff
United States of America
225 Cadman Plaza East.
Brooklyn, New York 11201

By:


HENRY A. BRACHTL
Assistant U. S. Attorney

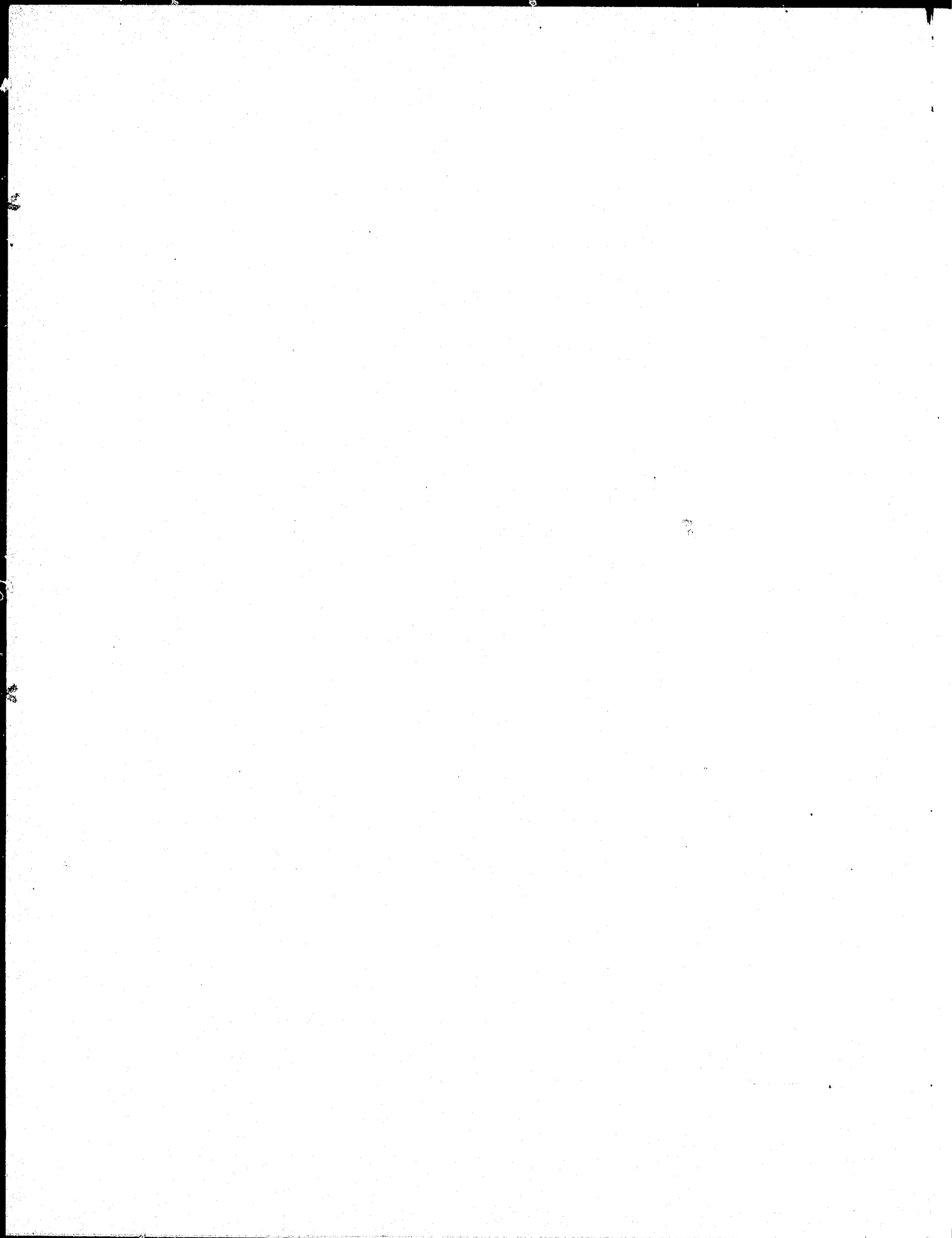
TO:

KAYE, SCHOLER, FIERMAN, HAYS
& HANDLER, ESQS.
Attorneys for Defendant
425 Park Avenue
New York, New York 10022

MORTIMER TODEL, ESQ.
Plaintiff Pro Se
150 East 58th Street
New York, New York 10022

33a

**Plaintiffs' Statement Pursuant to Rule 9(g) of the
General Rules of the District Court**



JDP:HAB:sm
F.1670384

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property of
ROOSEVELT CAPITAL CORPORATION,

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.

STATEMENT PURSUANT
TO RULE 9(g) OF
THE GENERAL RULES
OF THIS COURT

Civil Action
No. 67 C 439

The following are material facts as to which
plaintiff UNITED STATES OF AMERICA contends there is no
genuine issue to be tried:

(1) ROOSEVELT CAPITAL CORPORATION ("RCC")
qualified as a small business investment company pursuant
to 15 U.S.C. §681, et seq., and on February 8, 1962,
borrowed \$150,000 from the UNITED STATES through the U. S.
Small Business Administration ("SBA"). RCC issued an ele-
ven year debenture to the UNITED STATES evidencing the
indebtedness.

(2)

(a) The Government loan to RCC became due and
payable in 1964, prior to maturity, upon the breach of
certain conditions of the debenture.

(b) The UNITED STATES sued on the indebtedness
and was awarded judgment in the amount of \$157,229.17
plus interest by the United States District Court for the
Southern District of New York.

(c) No amount has been collected by the UNITED
STATES on said judgment and, as of March 9, 1973, the
indebtedness owed the UNITED STATES, including accrued
interest, was \$235,487.37.

(3)

(a) At the opening of business on May 14, 1964, the 15,500 shares of common stock of RCC were owned severally by twenty-two shareholders, and the shareholders' equity in RCC was \$155,000, the amount of RCC's initial capitalization.

(b) Also, at the opening of business on May 14, 1964, RCC had assets of

(i) approximately \$1,000 cash on deposit at the Roosevelt Field Branch of the FRANKLIN NATIONAL BANK ("Roosevelt Field Branch");

(ii) \$187,000 in matured Treasury bills held for account of RCC at the Roosevelt Field Branch; and,

(iii) accounts receivable and investments (loans to small businesses) worth \$118,000 at face value.

(4) On April 28, 1964, the shareholders of RCC, through Sidney Tolmage ("Tolmage"), an attorney and RCC shareholder, had agreed to sell all 15,500 shares of RCC stock to S. Lonnie Olanow ("Olanow") for \$160,000.

(5)

(a) On May 13, 1964, at FRANKLIN NATIONAL BANK, Hanover Square Branch, Olanow was introduced to Patrick J. Mastronardo ("Mastronardo"), then an Assistant Cashier of FRANKLIN NATIONAL BANK, Hanover Square Branch, by William J. Wallace ("Wallace"), Vice President in charge of the Roosevelt Field Branch.

(b) Olanow arranged with Mastronardo that Mastronardo would have available a meeting room at the FRANKLIN NATIONAL BANK, Hanover Square Branch, 130 Pearl Street, Manhattan, on Thursday, May 14, 1964 for the purpose of a closing of the purchase and sale of RCC.

(6)

(a) Present and participating in the closing of

the sale of RCC shares at the Hanover Square Branch on May 14, 1964, were:

Sidney Tolmage, Esq.		Selling shareholder and seller's counsel and representative
Ray Pierson)	
	:	Purchasers
S. Lonnie Olanow)	
Samuel Stone, Esq.		Purchasers' counsel

(b) After the closing meeting commenced, Patrick J. Mastronardo, Assistant Cashier, Hanover Square Branch, joined the meeting.

(7) Mastronardo discussed with the principals the inability of the purchasers to tender payment in a form acceptable to the sellers. Agreement was reached among the principals and Mastronardo for FNB that, as an accommodation to the sellers and to facilitate the closing, FNB would issue its official checks for \$160,000 at the instance of Pierson, the purchaser, payable to Tolmage, the seller, and would charge those checks against the account of Roosevelt Capital Corporation, with the understanding of all parties that "other monies" would soon be deposited to the RCC account by the purchasers.

Thus:

(8)

(a) During the closing, RCC's ownership of matured Treasury bills worth \$187,000 was confirmed by telephone call to William J. Wallace of the Roosevelt Field Branch, FNB.

(b) Wallace was directed to redeem the matured Treasury bills for the account of RCC and to transmit the proceeds to the Hanover Square Branch.

(c) The proceeds of the redemption of the Treasury bills were thereafter deposited to a new account in the name of RCC opened that day at FNB, Hanover Square Branch, upon acceptance or approval of Mastronardo.

(9) A purported certificate of a corporate resolution of RCC and a signature card for the new RCC accounts, including in their designation Pierson and Stone of the purchaser group as officers of RCC and authorized signatories on the new RCC account, were delivered to Mastronardo.

(10) Pierson also delivered to Mastronardo a letter requesting that FNB issue two cashier's checks in the amounts, respectively, of \$118,000 and \$42,000 payable and delivered to Tolmage, which letter Pierson had signed: "Roy Pierson, Roosevelt Capital Corporation."

(11) Mastronardo furnished the cashier's checks for \$118,000 and \$42,000 payable to Tolmage, and they were tendered to and accepted by Tolmage as the purchase price for the RCC shares.

(12)

(a) Mastronardo prepared debit advice forms instructing the FNB bookkeeping department to charge against the RCC corporate account the debits of \$118,000 and \$42,000 created by issuance of the two cashier's checks in those respective amounts.

(b) The RCC account was subsequently charged \$160,000.

(13)

(a) Thus, the \$118,000 and \$42,000 cashier's checks with which the purchasers purchased the shares of RCC were paid for with RCC corporate funds.

(b) The RCC corporate assets were thus reduced from approximately \$306,000 to \$146,000, an amount less than RCC's outstanding liabilities.

(14) At the closing, Tolmage was able to deliver only 14,333.3 of the sellers' 15,500 shares. These were delivered to Mastronardo for FNB together with Tolmage's written undertaking to deliver to FNB the remaining 1,166.7 shares within thirty days or \$10 for each such share not delivered.

(15)

(a) After receiving the cashier's checks in payment of the purchase price, Tolmage endorsed the \$118,000 cashier's check to RCC, as consideration for the assignment to the sellers of RCC's accounts receivable, fulfilling the sellers' undertaking to deliver RCC with cash assets only.

(b) The \$118,000 check was deposited to the new RCC account at the Hanover Square Branch.

(16)

(a) Also on May 14, after the closing, corporate accounts introduced by Olanow and approved by Mastronardo were opened at the Hanover Square Branch in the names of Trans-World Theatricals, Inc. and United Film World.

(b) A check for \$60,000 was drawn against the RCC account and deposited to the new account of Trans-World Theatricals, Inc.

(c) A check for \$60,000 was drawn against the RCC account to the order of United Film World and deposited

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in the latter's account. A check was then drawn against the United Film World account in the sum of \$42,000 payable to order of Ray Pierson. The latter check was, in turn, deposited to the RCC account, resulting in a net transfer from RCC to United Film World of \$18,000.

(17)

(a) On Friday, May 15, Mastronardo approved or accepted for FNB an account for Contractors Guild, Inc., for which Pierson was designated an officer and authorized signatory.

(b) The account was opened with the deposit of a \$44,000 check drawn against the Trans-World Theatricals account, to which the \$60,000 RCC check had been deposited the previous day.

(c) On or about Monday, May 18, Mastronardo accepted or approved a personal account for Olanow.

(18) On May 18 and 19, Mastronardo called Pierson several times to get him to accept the RCC shares.

(19)

(a) On or about May 20, Mastronardo obtained a credit agency report that Olanow had been "charged with theft of \$190M" and had "many suits filed against him," and that "[t]wo local banks have encountered considerable difficulties and would not care to deal with subject under any circumstances."

(b) Mastronardo called the bank which Olanow had given as a reference and was advised that Olanow "is a smooth operator" and that the bank "would not only refuse to make him a loan, but would not even open an account for him."

(20)

(a) After receiving the "highly unfavorable" credit reports on Olanow, Mastronardo telephoned William J. Wallace of the Roosevelt Field Branch and inquired about

Wallace's knowledge of the purchasers.

(b) Then Mastronardo called one of the sellers, and observed that unfavorable credit reports had been received on Olanow, "that no outside funds were coming into this operation," and that he "just did not like the smell of the entire situation."

(21) Later on May 20, Mastronardo visited Olanow and told him to make other arrangements for his own and the RCC and related accounts.

(22) Also on May 20 Mastronardo delivered to the purchasers the 14,333.3 shares of RCC stock then in FNB's possession and received Pierson's receipt therefor.

(23) On May 26, after receiving the remaining 1,166.7 RCC shares from Tolmage, Mastronardo delivered them to a representative of the purchasers.

(24)

(a) Also on May 26, at Pierson's request, Mastronardo for FNB approved certification of a check against the RCC account for \$67,000, the balance in that account, payable to RCC.

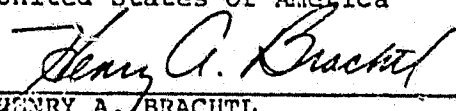
(b) The RCC account was thereafter closed by FNB.

(c) Pierson and associates subsequently wrongfully dissipated the remaining \$67,000 of RCC assets.

Dated: Brooklyn, New York
May 15, 1973

ROBERT A. MORSE
United States Attorney,
Eastern District of New York
Attorney for Plaintiff
United States of America

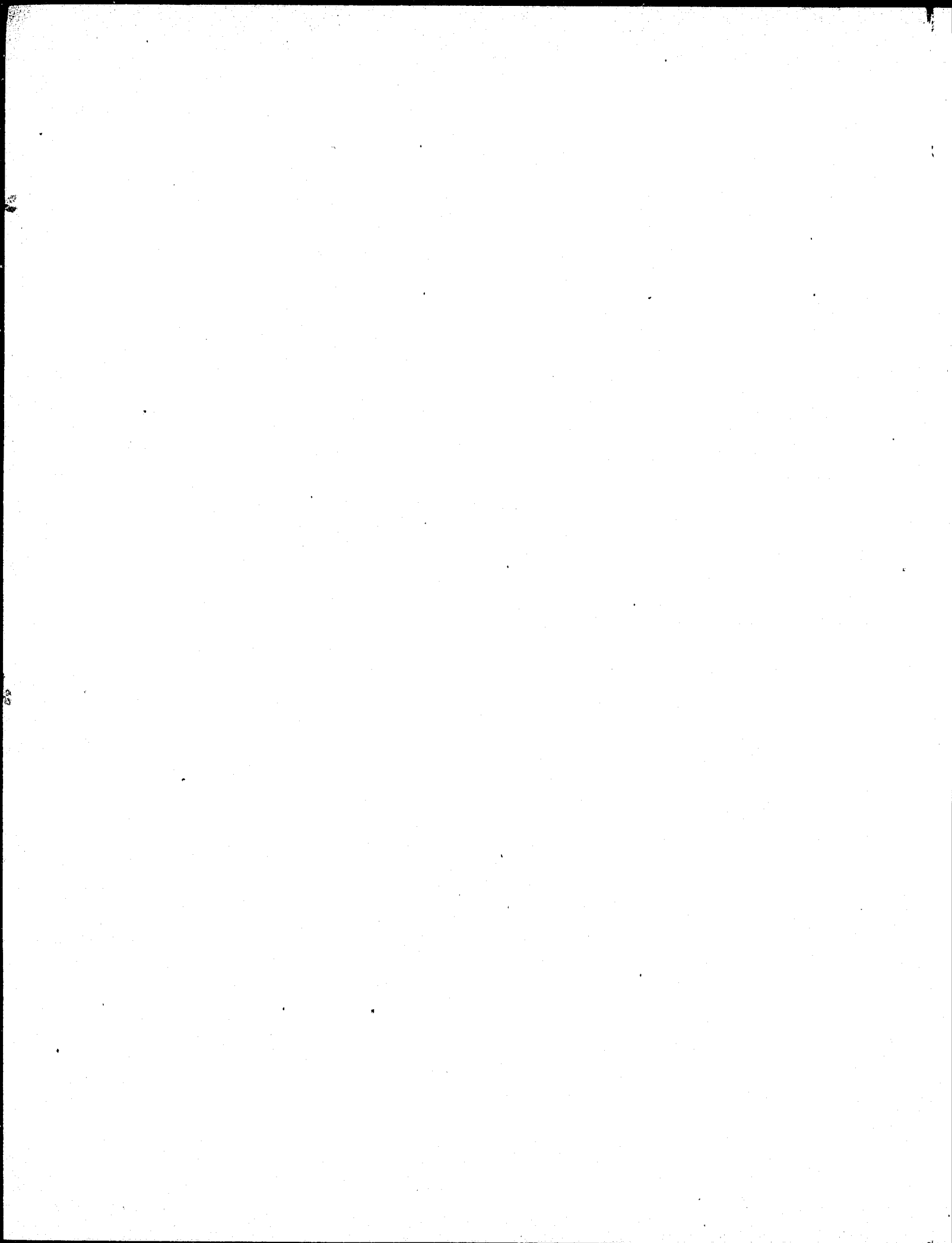
By:


HENRY A. BRACHTL
Assistant U. S. Attorney

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**Affidavit of Henry A. Brachtl, Assistant United States
Attorney, Sworn to May 15, 1973**



JDP:HAB:sm
F.#670384

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property of
Roosevelt Capital Corporation,

AFFIDAVIT

Plaintiffs,

Civil Action

-against-

No. 67 C 439

FRANKLIN NATIONAL BANK,

Defendant.

STATE OF NEW YORK)
 : SS.:
COUNTY OF KINGS)

HENRY A. BRACHTL, being duly sworn, deposes and
says:

FIRST: I am an Assistant United States Attorney
for the Eastern District of New York counsel, for plaintiff
UNITED STATES OF AMERICA in the above action, and I make
this affidavit in support of the motion of plaintiff UNITED
STATES for summary judgment against defendant FRANKLIN
NATIONAL BANK pursuant to Rule 56 of the Federal Rules of
Civil Procedure on the grounds that there is no genuine
issue as to any material fact and that the UNITED STATES is
entitled to judgment in its favor as a matter of law.

SECOND: That there is no genuine issue as to any
material fact is demonstrated by the admissions and affida-
vit appended hereto and the transcripts of depositions which
accompany this affidavit.

Specifically, reference will be made below to:

- (a) Request of plaintiff UNITED STATES
for admissions, dated Nov. 1, 1972, A1*,
(referred to herein as "Request").

*Pages of the Appendix hereto are designated with an
"A" followed by the page number.

- (b) Response of defendant to Request For Admission, dated Dec. 4, 1972, A-11, (referred to herein as "Response").
- (c) Request of plaintiff UNITED STATES for admission of genuineness of documents, dated Nov. 1, 1972, A-17, (referred to herein as "Documents Request").
- (d) Response of defendant to Documents Request, dated Dec. 4, 1972, A-61, (referred to herein as "Response").
- (e) Affidavit of J. K. Aynesworth, Financial Analyst, Commercial, Office of Loan Administration of the U. S. Small Business Administration, dated May 10, 1973, A-63, (referred to herein as the "SBA Affidavit").
- (f) Transcript of testimony of FRANKLIN NATIONAL BANK, by P. J. Mastronardo, Assistant Vice President, in deposition upon oral examination by UNITED STATES in United States v. Roosevelt Capital Corp. and Ray Pierson, U.S.D.C., S.D.N.Y., Civil Action No. 65 Civ. 162, on March 26, 1965, (copy filed with the Court herewith) (referred to herein as the "FNB Deposition").
- (g) Transcript of testimony of Patrick J. Mastronardo as a witness in deposition upon oral examination on May 22, 1973 (copy filed with the Court herewith) (referred to herein as the "Mastronardo Deposition").
- (h) Transcript of testimony of Sidney Tolmage as a witness in deposition upon oral examination on May 22, 1972 (copy filed with the Court herewith) (referred to herein as the "Tolmage Deposition").

THIRD: The material facts as to which there is no genuine issue to be tried are recited in the accompanying statement of plaintiff UNITED STATES pursuant to Rule 9(g) of the General Rules of this Court. The purpose of this affidavit is to identify the admissions and deposition testimony of defendant FRANKLIN NATIONAL BANK which admit those material facts. As to facts not necessarily within the knowledge of, or previously admitted by, defendant or its officers but which are not subject to genuine dispute, reference will be made to the S.B.A. Affidavit and the Tolmage Deposition.

FOURTH: Accordingly, each material fact is numbered and set out below as it appears in the accompanying Statement Pursuant to Rule 9(g), and each such material fact is followed by appropriate references and quotations of testimony and, in some instances, comments of this affiant.

FIFTH: It is submitted that, for the reasons set forth in the accompanying memorandum of law, the undisputed facts show that defendant FRANKLIN NATIONAL BANK ("FNB") remains indebted to Roosevelt Capital Corporation ("RCC") and liable to the UNITED STATES, the corporation's judgment creditor, for \$305,000 of corporate funds deposited with the bank in 1964 because the bank converted such funds, received them by fraudulent conveyance, paid them without lawful authority, and/or knowingly facilitated the conversion or embezzlement of such funds by strangers or persons known to be breaching a fiduciary obligation to the corporation.

MATERIAL FACTS AS TO WHICH
THERE IS NO GENUINE ISSUE

MATERIAL FACT NO. (1)

ROOSEVELT CAPITAL CORPORATION ("RCC") qualified as a small business investment company pursuant to 15 U.S.C. §681, et seq., and on February 8, 1962, borrowed \$150,000 from the UNITED STATES through the U. S. Small Business Administration ("SBA"). RCC issued an twenty year debenture to the UNITED STATES evidencing the indebtedness.

Reference

See the SBA Affidavit, A-63.

MATERIAL FACT NO. (2)

(a) The Government loan to RCC became due and payable in 1964, prior to maturity, upon the breach of certain conditions of the debenture.

(b) The UNITED STATES sued on the indebtedness and was awarded judgment in the amount of \$157,229.17 plus interest by the United States District Court for the Southern District of New York.

(c) No amount has been collected by the UNITED STATES on said judgment and, as of March 9, 1973, the indebtedness owed the UNITED STATES, including accrued interest, was \$235,487.37.

Reference

See the SBA Affidavit, A-63.

MATERIAL FACT NO. (3)

(a) At the opening of business on May 14, 1964 the 15,500 shares of common stock of RCC were owned severally by twenty-two shareholders, and the shareholders' equity in RCC was \$155,000, the amount of RCC's initial capitalization.

(b) Also, at the opening of business on May 14, 1964, RCC had assets of

(i) approximately \$1,000 cash on deposit at the Roosevelt Field Branch of FRANKLIN NATIONAL BANK ("Roosevelt Field Branch");

(ii) \$187,000 in matured Treasury bills held for account of RCC at the Roosevelt Field Branch; and,

(iii) accounts receivable and investments (loans to small businesses) worth \$118,000 at face value.

References

Comment: Thus, the assets and liabilities of RCC at the opening of business on May 14, 1964 were approximately as follows:

ASSETS

Cash on deposit
at Roosevelt Field
Branch \$ 1,000

Treasury bills held
for RCC at Roosevelt
Field Branch 187,000

Accounts receivable
(loans to small
businesses) 118,000

TOTAL \$306,000

LIABILITIES

Debt to UNITED STATES
per debenture \$150,000

STOCKHOLDERS EQUITY

Capital Stock 155,000

Retained Income 1,000

\$306,000

FNB admits that at the opening of business on May 14, 1964, RCC had assets of (i) "at least \$1,000 cash on deposit with FNB;" (ii) "\$187,000 in matured Treasury bills held for the account of RCC at the Roosevelt Field Branch;" and (iii) "accounts receivable and investments worth at least \$118,000 at face value." Request, A-3; Response, A-12.

Tolmage testified, Tolmage Deposition, p.8, as to RCC's assets, liabilities and shareholders' equity as follows:

Q: What was the price you were asking for the the shares, initially?

A: We wanted to sell it for what the investors paid for it and by that I mean the stockholders, plus five thousand dollars for the work we had put in, in getting the organization started, incorporated, and in business, and we would turn over to them a corporation which had Three-Hundred-Five Thousand dollars in assets subject to a loan by the United States Government of One-Hundred-Fifty-Thousand dollars.

Q: Now, you referred to the amount which the shareholders had paid for the shares. Was that amount the original shareholders paid in capital or equity?

A: Fifty-five -- One-Hundred-Fifty-Five Thousand dollars.

Q: So that the asking price was that amount, plus the Five Thousand dollars, to which you referred, or One-Hundred-Sixty Thousand dollars?

A: That is correct. That's for the shares.

That there were 15,500 shares of RCC on May 14, 1964 is attested by the copies of the agreement of sale of those shares, with letter amendment, identified by Tolmage, a signatory. Tolmage Deposition, pp. 6 and 15 exhibits thereto.

That the shares of RCC were owned severally by

twenty-two shareholders is attested by receipts for the shares sold on May 14, 1964 pursuant to the agreement, which receipts noted the individual sellers and numbers of shares sold by each. See receipt acknowledging receipt of 14,333.3 shares of RCC stock signed by Ray E. Pierson, A-53, admitted by FNB to be genuine. Documents Request, A-20 and 53; Response A-61. See letter of S. Tolmage to FNB, P. J. Mastronardo, transmitting 1,166.7 shares of RCC stock, A-34, admitted by FNB to be genuine. Documents Request A-19 and 34; Response A-61.

That the accounts receivable had a face value of \$118,000 is attested by the testimony of Tolmage, who endorsed a check in that amount to RCC in consideration of the assignment by RCC of the receivables portfolio to the selling shareholders. Tolmage Deposition, pp. 38-39.

MATERIAL FACT NO. (4):

On April 28, 1964, the shareholders of RCC, through Sidney Tolmage ("Tolmage"), an attorney and RCC shareholder, had agreed to sell all 15,500 shares of RCC stock to S. Lonnie Olanow ("Olanow") for \$160,000.

References

See the sale agreement and letter modification identified by Tolmage, a signatory. Tolmage Deposition, pp. 6 and 15 and exhibits thereto.

MATERIAL FACT NO. (5)

(a) On May 13, 1964, at FRANKLIN NATIONAL BANK, Hanover Square Branch, Olanow was introduced to Patrick J. Mastronardo ("Mastronardo"), then an Assistant Cashier of FRANKLIN NATIONAL BANK, Hanover Square Branch, by William J. Wallace ("Wallace"), Vice President in charge of the Roosevelt Field Branch.

(b) Olanow arranged with Mastronardo that Mastronardo would have available a meeting room at the FRANKLIN NATIONAL BANK, Hanover Square Branch, 130 Pearl Street, Manhattan, on Thursday, May 14, 1964 for the purpose of a closing of the purchase and sale of RCC.

References

FNB admits the above facts. Request, A-2; Response, A-11.

Mastronardo's introduction to Olanow and Olanow's request for a meeting room for the RCC closing are recounted in an FNB file memorandum by Mastronardo dated May 25, 1964, reproduced at A-59, which FNB has admitted is genuine. Documents Request, A-21 and 59; Response, A-61.

MATERIAL FACT NO. (6)

(a) Present and participating in the closing of the sale of RCC shares at the Hanover Square Branch on May 14, 1964, were:

Sidney Tolmage, Esq.	Selling shareholder and seller's counsel and representative
----------------------	---

Ray Pierson)
	: Purchasers
S. Lonnie Olanow)

Samuel Stone, Esq.	Purchasers' counsel
--------------------	---------------------

(b) After the closing meeting commenced, Patrick J. Mastronardo, Assistant Cashier, Hanover Square Branch, joined the meeting.

References

FNB admits "that at the closing of the sale of RCC at the Hanover Square Branch on May 14, 1964, Sidney Tolmage, Ray Pierson, S. Lonnie Olanow and Samuel Stone were present at various times," and admits "that from time to time at the request of the participants Mr. Mastronardo was present in the meeting room." Request, A-2; Response, A-12.

During the FNB Deposition, pp. 6-7, Mastronardo testified that Olanow "was going to acquire Roosevelt Capital Corporation," Pierson "was an associate of Lonnie Olanow in the buying group," Stone "was an attorney for the buying group," and Tolmage was "an attorney for the selling group." Mastronardo also testified, p. 17, that he "was in the conference room for some time because the closing extended over quite a lengthy period of time."

MATERIAL FACT NO. (7)

Mastronardo discussed with the principals the inability of the purchasers to tender payment in a form acceptable to the sellers. Agreement was reached among the principals and Mastronardo for FNB that, as an accommodation to the sellers and to facilitate the closing, FNB would issue its official checks for \$160,000 at the instance of Pierson, the purchaser, payable to Tolmage, the seller, and would charge those checks against the account of Roosevelt Capital Corporation, with the understanding of all parties that "new money" would soon be deposited to the RCC account by the purchasers.

References

Testifying for and as an officer of FRANKLIN NATIONAL BANK, Mastronardo on March 26, 1965 gave the following testimony:

pp. 7-9

Q: Would you describe the circumstances under which it [the bank] issued the checks, please?

A: Yes. During the conference either Mr. Olanow or Ray Pierson -- I don't recall which one -- came to me and asked whether we could as a matter of convenience, assist them by issuing two official checks. Apparently, to effect this closing it was required that they present certified checks. They stated that they were from out of town and could not produce certified checks and asked if we would issue, instead, official checks. This was done primarily to service our customer, the selling group, and that is about it.

Q: Do you recall the amount of the certified check or checks that were issued?

A: Yes, there were two checks issued, one in the amount of \$118,000, the other in the amount of \$42,000, both checks being payable to Sidney Tolmage.

Q: What security, if any, did the bank receive for issuing these certified checks?

A: I was told that by virtue of this acquisition the company would have available to it \$187,000 in cash representing the proceeds of matured treasury bills. We were authorized by Ray Pierson, by letter, to issue official checks against this cash fund.

Q: When were the treasury bills delivered to you?

A: The treasury bills had matured on that day, and the cash proceeds were available in our Roosevelt Field, Long Island, office on that day. This I verified. Simultaneously, I obtained a copy of a letter that had been given from the attorney for the seller, Sidney Tolmage, addressed to Samuel Stone -- that letter is in the record, I believe -- indicating that the funds were available to the buying corporation.

pp. 14-15

Q: Was the Franklin National Bank ultimately repaid for the \$160,000 in official checks that it issued?

A: It was repaid at the time of the issuance in that we charged the account of Roosevelt Capital Corporation for the amount of those checks. The proceeds of the matured treasury bills -- that is, \$187,000 in cash -- was credited on the day of closing to the account of Roosevelt Capital Corporation which account was opened at the 130 Pearl Street office [Hanover Square Branch].

[Subsequently, as will be seen below, Mastronardo became alarmed when he received "highly unfavorable" credit reports about Glanow.] Mastronardo testified:

pp. 31-32

Q: Did you have any communication with the sellers of the stock of Roosevelt Capital Corporation with respect to the results of your investigation?

A: Yes. I was unhappy over the results of my investigation and I called the sellers to find out exactly who these people were which had been introduced to us as customers.

Q: Will you relate, as much as you can, the conversation you had with the representative of the sellers?

A: Yes. I made two observations. First, the unfavorable credit reports. Secondly, that it appeared that no outside funds were coming into this operation, which raised a serious question in my mind. I wanted to get an explanation from the sellers.

Q: When you say no outside funds were coming in and this raised a serious question, would you be more explicit, please, as to what you mean?

A: Yes. I had assumed that other monies would be coming in other than from the \$187,000 in treasury bills that was credited to the new account.

Q: What was the ground of your assumption, or the reason for it, if there was one?

A: The principals initially spoke of not having certified checks available to buy this company, so I assumed there were other monies coming in, and that our issuing the official checks was merely a convenience to assist both the buyers and sellers in this instance.

p. 52

Q: Was it the practice of your bank to issue checks where there is a corporation being purchased and the money for the purchase of the corporation is actually taken from the corporation itself?

A: These were peculiar circumstances. At the time I was asked to issue the checks I felt I had two alternatives, either to issue them or to refuse to issue them. To refuse to do so would be to jeopardize what appears to be a desirable sale on the part of good customers at the bank. To do so I felt would be an accommodation to our customers, and also, as long as I was assured that the money was available to the buyers to back up these official checks I felt I was reasonably safe.

Mastronardo is no longer an officer of FNB. Upon his deposition as a witness on June 22, 1972, he confirmed the description of the arrangement he had made for FNB with the principals in the sale of RCC. See transcript of deposition of Patrick J. Mastronardo, June 22, 1972, pp. 107-131. On that occasion, Mastronardo testified as follows:

pp. 110-111

Q: What [was] your discussion with the members of the buying and selling groups?

A: How we could resolve their problem; that is, to effect the closing that day in a way which would be suitable to all parties.

Q: What was the resolution or the decision?

A: The resolution would be the sellers would make available to the buyers \$187,000 representing the proceeds of the matured Treasury bills which would, in turn, enable me to issue the official checks in question, the \$118,000 and the \$42,000 checks.

Q: Was this then to be a loan from the selling group to the buying group?

A: No loan was ever discussed or contemplated.

Q: You just said that the selling group was to make available \$187,000 to the buying group for the purchase. How were they to make that available?

A: Everything was to be done simultaneously. This was a practical solution to a business problem, an expedient one that was made on my part with the underlying assumption both parties were acting in good faith and, had that been so, never would have caused a ripple.

MATERIAL FACT NO. (8)

(a) During the closing, RCC's ownership of matured Treasury bills worth \$187,000 was confirmed by telephone call to William J. Wallace of the Roosevelt Field Branch, FNB.

(b) Wallace was directed to redeem the matured Treasury bills for the account of RCC and to transmit the proceeds to the Hanover Square Branch.

(c) The proceeds of the redemption of the Treasury bills were thereafter deposited to a new account in the name of RCC opened that day at FNB, Hanover Square Branch, upon acceptance or approval of Mastronardo.

References

FNB admits (a) "that RCC's ownership of matured Treasury bills worth \$187,000 was confirmed by telephone call;" (b) "that FNB was directed to redeem the matured Treasury bills for the account of RCC and to transmit the proceeds of the redemption of said matured Treasury bills were thereafter deposited to a new account of RCC at the Hanover Square Branch opened by RCC on May 14, 1964." Request, A-4; Response A-12.

See FNB Deposition, pp. 8-15.

That William Wallace of the FNB Roosevelt Field Branch was contacted regarding the Treasury bills and their proceeds is attested by a letter of Tolmage to Stone dated May 14, 1964, reproduced at A-24, which FNB has admitted is genuine. Documents Request, A-17 and 24; Response, A-61. See FNB Deposition, p.9.

The FNB new account advice form for the new account of RCC at the Hanover Square Branch dated May 14, 1964 is reproduced at A-25 and is admitted by FNB to be genuine. Documents Request, A-17 and 25; Response, A-61.

The FNB credit advice form crediting the \$187,000 proceeds to the new RCC account at Hanover Square Branch is reproduced at A-26 and is admitted by FNB to be genuine. Documents Request, A-18 and 26; Response, A-61.

MATERIAL FACT NO. (9)

A purported certificate of a corporate resolution of RCC and a signature card for the new RCC account, including in their designation Pierson and Stone of the purchaser group as officers of RCC and authorized signatories on the new RCC account, were delivered to Mastronardo.

References

FNB admits "that a certificate of a corporate resolution of RCC and a signature card for the RCC account, including in their designation Pierson and Stone as officers of RCC and authorized signatories on the new RCC account, were delivered to FNB." Request, A-4; Response, A-13.

See FNB Deposition; pp. 10-11.

The FNB form secretary's certificate of corporate resolution by Stone ostensibly as secretary of RCC is reproduced at A-27 and is admitted by FNB to be genuine. Documents request, A-18 and 27; Response, A-61.

The FNB signature card for the new RCC account is reproduced at A-28 and is admitted by FNB to be genuine. Documents Request, A-18 and 28; Response, A-61.

MATERIAL FACT NO. (10)

Pierson also delivered to Mastronardo a letter requesting that FNB issue two cashier's checks in the amounts, respectively, of \$118,000 and \$42,000 payable and delivered to Tolmage, which letter Pierson had signed: "Ray Pierson, Roosevelt Capital Corporation."

References

FNB admits that FNB was "instructed . . . by letter to issue two cashier's checks in the amounts, respectively, of \$118,000 and \$42,000, payable to Tolmage" Request, A-4; Response, A-13.

See FNB Deposition, pp. 10-12.

The letter signed by Pierson to FNB requesting the cashier's checks is reproduced at A-29 and is admitted by FNB to be genuine. Documents Request, A-18 and 29; Response, A-61.

MATERIAL FACT NO. (11)

Mastronardo furnished the cashier's checks for \$118,000 and \$42,000, payable to Tolmage, and they were tendered to and accepted by Tolmage as the purchase price for the RCC shares.

References

FNB admits that "Mastronardo supplied the cashier's checks for \$118,000 and \$42,000, payable to Tolmage, as requested," and that "[t]he two checks thus supplied were then tendered to and accepted by Tolmage." Request, A-5; Response, A-13.

FNB also admits "that Tolmage acting for the sellers received the purchase price for the shares at the closing." Request, A-5; Response, A-13.

During the FNB Deposition, pp. 12-13, Mastronardo testified as follows:

Q: Just reviewing again, Mr. Mastronardo, after you received the corporate resolutions and the letters that you have just referred to, was it you who caused the bank to issue the two official checks in the amount of \$118,000 and \$42,000.

A: Yes.

Q: Did you then deliver the checks to one of the parties at this closing?

A: Yes, I gave the checks to the buyers who in turn delivered them to Sidney Tolmage, the payee.

Q: Do you recall the individual to whom you delivered them on behalf of the buyers?

A: I don't recall the individual. We were there as a group, and I merely passed them on to the buyers, either Pierson or Olanow, I would believe, although I can't say with certainty.

Q: In your presence, you observed the representative of the buyers deliver the two checks to Mr. Tolmage representing the sellers?

A: Yes.

FNB official check No. 7531417 for \$118,000 to order of Sidney Tolmaga, with endorsement, is reproduced at A-30 and is admitted by FNB to be genuine. Documents Request, A-13 and 30; Response, A-61. FNB check No. 753148 for \$42,000 is reproduced at A-31 and is admitted to be genuine. Documents Request A-18 and 31, Response, A-61. MATERIAL FACT NO. (12)

(a) Mastronardo prepared debit advice forms instructing the FNB bookkeeping department to charge against the RCC corporate account the debits of \$118,000 and \$42,000 created by issuance of the two cashier's checks in those respective amounts.

(b) The RCC account was subsequently charged \$160,000.

References

FNB admits that "Mastronardo . . . prepared debit advice forms instructing the FRANKLIN NATIONAL BANK bookkeeping department to charge against the RCC corporate account the debits of \$118,000 and \$42,000." Request, A-5; Response, A-13.

It should also be noted that FNB admits that "[a]ctually neither the \$118,000 and \$42,000 debits representing payment for the cashier's checks, nor the \$187,000 credit representing deposit of the Treasury bills proceeds, were posted to an account ledger until Tuesday, May 19;" that "[on] that day, the \$187,000 credit was posted to the new account at the Hanover Square Branch;" that "debits in the amounts of \$118,000 and \$42,000 were posted to the old RCC account" (emphasis added); and that "on May 19, 1964 the old RCC account was apparently overdrawn in the amount of \$159,129.13, and the new RCC account had a positive balance of \$227,000." FNB asserts that "on or about May 20, 1964 the overdrawn situation in the old RCC account was corrected by a credit in the amount of \$160,000 and further states that adjustment entries were made on May 26, 1964 in the process of closing RCC's accounts in order to correct bookkeeping errors." Request, A-6; Response, A-13-14.

During the FNB Deposition, pp. 14-15, Mastronardo testified as follows:

Q: Was the Franklin National Bank ultimately repaid for the \$160,000 in official checks that it issued?

A: It was repaid at the time of the issuance in that we charged the account of Roosevelt Capital Corporation for the amount of those checks. The proceeds of the matured treasury bills -- that is, \$187,000 in cash -- was credited on the day of closing to the account of Roosevelt Capital Corpora-

tion which account was opened at the 130 Pearl Street office.

Q: Let me see if I understand it then. The proceeds of the treasury bills were available at your Roosevelt Field office?

A: Yes.

Q: You had verified that?

A: Yes.

Q: So through bookkeeping or other transaction the proceeds were transferred to your Hanover Square office?

A: Correct.

Q: And the bank charged the account at Hanover Square for \$160,000?

A: That's correct, the total amount of the two checks.

Q: You are quite sure that is the way it was done?

A: That's right. This will be borne out by the record. There is a credit of \$137,000 to the account effected as of the date of the closing.

The account ledger for the account of RCC at the Hanover Square Branch for the period May 14-26, 1964 is reproduced at A-33 and is admitted by FNB to be genuine. Documents Request, A-19 and 33; Response, A-61.

MATERIAL FACT NO. (13)

(a) Thus, the \$118,000 and \$42,000 cashier's checks with which the purchasers purchased the shares of RCC were paid for with RCC corporate funds.

(b) The RCC corporate assets were thus reduced from approximately \$306,000 to \$146,000, an amount less than RCC's outstanding liabilities.

References

Comment: Assuming for illustration that the debit advice forms prepared by Mastronardo to support the cashier's checks reduced the RCC account by \$160,000 at the moment made, RCC then had assets and liabilities approximately as follows:

ASSETS

Cash on deposit at
Roosevelt Field Br. \$ 1,000

Cash on deposit at
Hanover Sq. Br.
(balance of proceeds
of Treasury bills) 27,000

Accounts receivable
(loans to small
businesses) 118,000

TOTAL \$146,000

LIABILITIES

Debt to UNITED STATES
per debenture \$150,000

STOCKHOLDERS EQUITY

Capital stock 155,000

Deficit -159,000

TOTAL \$146,000

MATERIAL FACT NO. (14)

At the closing, Tolmage was able to deliver only 14,333.3 of the sellers' 15,500 shares. These were delivered to Mastronardo for FNB together with Tolmage's written undertaking to deliver to FNB the remaining 1,166.7 shares within thirty days or \$10 for each such share not delivered.

References

FNB admits "that Tolmage acting for the sellers . . . did not have all the RCC shares available at that time to deliver to the purchasers" and asserts that "the parties to the closing requested Mr. Mastronardo to accommodate them by holding in safekeeping the RCC shares that were then available." Request, A 7-8; Response, A-15.

See FNB Deposition, pp. 13 and 61.

Mastronardo noted his receipt of 14,333.3 shares of RCC stock in a handwritten notation on a receipt for such shares signed by Pierson, reproduced at A-53 and admitted by FNB to be genuine. Documents Request, A-20 and 53; Response, A-61.

Tolmage's letter to FNB undertaking to deliver the outstanding shares to FNB within 30 days or pay \$10 for each such share is reproduced at A-34 and is admitted by FNB to be genuine. Documents Request, A-19 and 34; Response, A-61.

Comment: The delivery of the shares to the bank instead of the purchasers, with an undertaking to deliver the balance to the bank or their value, evidences, it is submitted, that the bank held the shares as collateral to assure that the purchasers would restore the \$160,000 charged against the RCC account. That the bank held the shares as collateral is disputed by the bank, however, and establishment of the fact is not necessary to judgment in the government's favor.

MATERIAL FACT NO. (15)

(a) After receiving the cashier's checks in payment of the purchase price, Tolmage endorsed the \$118,000 cashier's check to Roosevelt Capital Corporation, as consideration for the assignment to the sellers of RCC's accounts receivable, fulfilling the sellers' undertaking to deliver RCC with cash assets only.

(b) The \$118,000 was deposited to the new RCC account at the Hanover Square Branch.

References

Comment: This exchange altered the composition of RCC's assets as follows:

<u>ASSETS</u>		<u>LIABILITIES</u>	
Cash on deposit at Roosevelt Field Br.	\$ 1,000	Debt to UNITED STATES per debenture	\$150,000
Cash on deposit at Hanover Sq. Br.	145,000	<u>STOCKHOLDERS EQUITY</u>	
		Capital stock	155,000
		Deficit	-159,000
TOTAL	\$146,000	TOTAL	\$146,000

FNB admits "that the \$118,000 check was deposited in the new RCC account at the Hanover Square Branch."

See Tolmage Deposition, pp. 36-39.

The \$118,000 check bearing Tolmage's endorsement is reproduced at A-30 and is admitted by FNB to be genuine. Documents Request, A-13 and 30; Response, A-61.

The deposit of the \$118,000 to the RCC account is reflected in the account ledger for the new RCC account at Hanover Square Branch for the period May 14-26, 1964, reproduced at A-33 and admitted by FNB to be genuine. Documents Request, A-19 and 33; Response, A-61.

MATERIAL FACT NO. (16)

(a) Also on May 14, after the closing, corporate accounts introduced by Olanow and approved by Mastronardo were opened at the Hanover Square Branch in the names of Trans-World Theatricals, Inc. and United Film World.

(b) A check for \$60,000 was drawn against the RCC account and deposited to the new account of Trans-World Theatricals, Inc.

(c) A check for \$60,000 was drawn against the RCC account to the order of United Film World and deposited in the latter's account. A check was then drawn against the United Film World account in the sum of \$42,000 payable to order of Ray Pierson. The latter check was, in turn, deposited to the RCC account, resulting in a net transfer from RCC to United Film World of \$18,000.

References

Comments: These dispersals of RCC funds, never recovered, further reduced RCC's assets as follows:

<u>ASSETS</u>		<u>LIABILITIES</u>	
Cash on deposit at Roosevelt Field Br.	\$ 1,000	Debt to UNITED STATES per debenture	\$150,000
Cash on deposit at Hanover Square Br.	67,000	<u>STOCKHOLDERS EQUITY</u>	
		Capital stock	155,000
		Deficit	-237,000
TOTAL	\$68,000	TOTAL	\$ 68,000

FNB admits (a) "that on or about May 14, 1964 Trans-World Theatricals, Inc. and United Film World opened corporate accounts at FNB;" (b) that "[a] check for \$60,000 was drawn against the RCC account and deposited to the new account of Trans-World Theatricals, Inc."; and (c) "that a check in the sum of \$60,000 was drawn by RCC to the order of United Film World and deposited in the latter's account; and that United Film World drew a check in the sum of \$42,000 payable to the order of Ray Pierson which check was endorsed by Mr. Pierson and deposited in the account of RCC." Request, A-6-7; Response, A-14.

See FNB Deposition, pp. 18-22.

During the FNB Deposition, p. 22, Mastronardo testified as follows:

Q: Did they tell you why they would have Roosevelt Capital Corporation make a loan of \$60,000 to United Film World and then have United Film World make a check out to Mr. Pierson for \$42,000 and then have Mr. Pierson endorse it right back to Roosevelt Capital Corporation?

A: I asked, because this appeared unusual, and I was told this represented loan transactions and settlement of preexisting obligations, the nature of which I do not recall, if I were told at the time, but I was satisfied at that time.

Contemporary notes by Mastronardo of inter-account activity of RCC, Trans-World Theatricals, Inc., United Film World and Contractors Guild, Inc. are reproduced at A-40 and are admitted by FNB to be genuine. Documents Request, A-20 and 40; Response, A-61.

The new account advice form and account ledger for the Trans-World Theatricals, Inc. account are reproduced at A-36 and A-37, respectively, and are admitted by FNB to be genuine. Documents Request, A-19 and 36-37; Response, A-61.

The new account advice form and account ledger for United Film World are reproduced at A-38 and A-39, respectively, and are admitted by FNB to be genuine. Documents Request, A-19 and 38-39; Response, A-61.

MATERIAL FACT NO. (17)

(a) On Friday, May 15, Mastronardo approved or accepted for FNB an account for Contractors Guild, Inc., for which Pierson was designated an officer and authorized signatory.

(b) The account was opened with the deposit of a \$44,000 check drawn against the Trans-World Theatricals account, to which the \$60,000 RCC check had been deposited the previous day.

(c) On or about Monday, May 18, Mastronardo accepted or approved a personal account for Olanow.

References

FNB admits (a) "that on or about May 15, 1964 Contractors Guild, Inc. opened a corporate account at FNB and that Pierson was included as an officer and authorized signatory;" (b) "that on or about the time the Contractors Guild account was opened a deposit was made in that account of a check in the amount of \$44,000 drawn by Trans-World Theatricals;" and (c) "that on or about May 18, 1964 Olanow opened a personal account at FNB." Request, A-7; Response, A-14-15.

See FNB Deposition, pp. 26-27

The FNB new account advice form, account ledger and signature card for account of Contractors Guild, Inc. are reproduced at A-44, 45 and 46, respectively, and are admitted by FNB to be genuine. Documents Request, A-20 and A-44-46; Response, A-61.

The FNB new account advice form for the account of Lonnie Olanow dated May 18, 1964 is reproduced at A-48 and is admitted by FNB to be genuine. Documents Request, A-20 and 48; Response, A-61.

MATERIAL FACT NO. (18)

On May 18 and 19, Mastronardo called Pierson several times to get him to accept the RCC shares.

References

During the FNB Deposition, pp. 56-57, Mastronardo testified as follows:

(Document headed "Received the following common stock certificates of Roosevelt Capital Corporation," marked Plaintiff's Exhibit 7 for identification.") [Reproduced at A-53.]

Q: Mr. Mastronardo, can you identify Plaintiff's Exhibit 7?

A: Yes, this is a receipt for the common stock certificates of Roosevelt Capital Corporation signed by Ray Pierson.

Q: I notice there is a handwritten notation in the upper left-hand corner of that receipt. Is that your handwriting?

A: Yes, it is. I put this there because Ray Pierson gave me the impression that he was stalling about taking delivery of the stock certificates. I did not want to assume any custody obligations or any fiduciary obligation in retaining these securities. I had to call him several times to get him to accept delivery.

MATERIAL FACT NO. (19)

(a) On or about May 20, Mastronardo obtained a credit agency report that Olanow had been "charged with theft of \$190M" and had "many suits filed against him," and that "[t]wo local banks have encountered considerable difficulties and would not care to deal with subject under any circumstances."

(b) Mastronardo called the bank which Olanow had given as a reference and was advised that Olanow "is a smooth operator" and that the bank "would not only refuse to make him a loan, but would not even open an account for him."

References

FNB admits "that on or about May 20, 1964 FNB made inquiry about the credit standing of the purchasers" and "that the credit reports received by FNB were unfavorable and refers thereto for the language thereof." Request, A-8-9; Response, A-15.

See FNB Deposition, pp. 29-30.

The FNB file memorandum by Mastronardo recording a Proudfoot agency credit report on Olanow is reproduced at A-51 and is admitted by FNB to be genuine. Documents Request, A-20 and 51; Response, A-61.

The FNB file memorandum by Mastronardo recording comments of an officer of the Toronto Dominion Bank on the credit and trustworthiness of Olanow is reproduced at A-52 and is admitted by FNB to be genuine. Documents Request, A-20 and 52; Response, A-61.

MATERIAL FACT NO. (20)

(a) After receiving the "highly unfavorable" credit reports on Olanow, Mastronardo telephoned William J. Wallace of the Roosevelt Field Branch and inquired about Wallace's knowledge of the purchasers.

(b) Then Mastronardo called one of the sellers, and observed that unfavorable credit reports had been received on Olanow, "that no outside funds were coming in to this operation," and that he "just did not like the

smell of the entire situation."

References

During the FNB Deposition, pp. 29-35, Mastronardo testified as follows:

Q: What was your conclusion with respect to your investigation of Mr. Olanow? Was he favorable or unfavorable?

A: Highly unfavorable.

. . .

Q: Did you have any communication with the sellers of the stock of Roosevelt Capital Corporation with respect to the results of your investigation?

A: Yes. I was unhappy over the results of my investigation and I called the sellers to find out exactly who these people were which had been introduced to us as customers.

. . .

Q: Will you relate, as much as you can, the conversation you had with the representative of the sellers?

A: Yes. I made two observations. First, the unfavorable credit reports. Secondly, that it appeared that no outside funds were coming into this operation, which raised a serious question in my mind. I wanted to get an explanation from the sellers.

. . .

Q: Do you remember anything further that you told to the representative of the sellers at that time?

A: Well, the gist of it is what I said before, that we have had these unfavorable reports, no outside funds were coming in, and I just did not like the smell of the entire situation, in effect.

. . .

Q: Did you have any discussions with Mr. Wallace with reference to this problem?

A: Yes.. I called Mr. Wallace and I said, "Where did you meet Mr. Olanow? I received these unfavorable reports." He said that he only met him at the reception that evening and knew nothing else other than what he had told me at the time.

. . .

Q: Do you recall any response by the representatives of the sellers, any remarks that he made during the telephone conversation?

A: Yes, they were quite upset about it. They were disturbed about the situation.

Q: When you say "they," --

A: I meant the individual I spoke with.

. . .

Q: Do you recall anything specifically that was told to you by the representative of the sellers at that time?

A: I think they were surprised. At least that is the impression he gave me.

Q: Did he say he would take any action or do anything with respect to the problem?

A: He did indicate he was going to give the matter serious thought. He didn't tell me what action he would take.

MATERIAL FACT NO. (21)

Later on May 20, Mastronardo visited Olanow and told him to make other arrangements for his own and the RCC and related accounts.

References

FNB admits "that Mastronardo ordered Olanow to close out the RCC account, his own account and all other accounts he or his associates had introduced to FNB." Request, A-9; Response, A-16.

During the FNB Deposition, p. 30, Mastronardo testified as follows:

Q: What action did you take, if any, on receipt of these reports?

A: I asked to see Lonnie Olanow privately and at that time told him to make other banking arrangements for both Roosevelt Capital Corporation, himself, and other corporations that he or his associates had introduced at the bank.

MATERIAL FACT NO. (22)

Also on May 20 Mastronardo delivered to the purchasers the 14,333.3 shares of RCC stock then in FNB's possession and received Pierson's receipt therefor.

References

FNB admits "that Mastronardo delivered to re-

presentatives of the purchasers the shares of RCC stock that he had been holding . . . and obtained a receipt therefor." Request, A-9; Response, A-16.

Pierson's receipt for 14,333.3 shares of RCC stock is reproduced at A-53 and is admitted by FNB to be genuine. Documents Request, A-20 and 53; Response, A-61.

During the FNB Deposition, pp. 56-58, Mastronardo testified as follows:

(Document headed "Received the following common stock certificates of Roosevelt Capital Corporation," marked Plaintiff's Exhibit 7 for identification.)

Q: Mr. Mastronardo, can you identify Plaintiff's Exhibit 7?

A: Yes, this is a receipt for the common stock certificates of Roosevelt Capital Corporation signed by Ray Pierson.

Q: I notice there is a handwritten notation in the upper left-hand corner of that receipt. Is that your handwriting?

A: Yes, it is. I put this there because Ray Pierson gave me the impression that he was stalling about taking delivery of the stock certificates. I did not want to assume any custody obligations or any fiduciary obligation in retaining these securities. I had to call him several times to get him to accept delivery.

Q: When was that notation made?

A: It was made on May 20, I believe, 1964.

Q: Would you read that notation into the record?

A: "We were asked to hold these certificates for safekeeping over the weekend. They were subsequently delivered to Ray Pierson on May 20 in the presence of and with the express consent of Olanow and all the corporate officers."

I put this note in here because at the same time we had developed unfavorable information on the principals of Roosevelt Capital Corporation and therefore I was being extra careful.

Q: Were all the corporate officers present when these were delivered to Mr. Pierson?

A: Yes, they were. I made it a point because there was a question in my mind as to what parties I should deliver these certificates.

MATERIAL FACT NO. (23)

On May 26, after receiving the remaining 1,166.7 RCC shares from Tolmage, Mastronardo delivered them to a representative of the purchasers.

References

FNB admits "that additional shares of RCC stock delivered to Mr. Mastronardo . . . were turned over by him to a representative of the purchasers on or about May 26, 1964." Request, A-9-10; Response, A-16.

During the FNB Deposition, pp. 59-61, Mastronardo testified as follows:

(Photostat of letter of May 20, 1964, addressed to Mr. Patrick J. Mastronardo marked Plaintiff's Exhibit 8 for identification.) [Reproduced at A-35.]

(Photostat of letter dated May 26, 1964, addressed to Mr. Sidney Tolmage marked Plaintiff's Exhibit 9 for identification.) [Reproduced at A-54.]

Q: I show you Plaintiff's Exhibits 8 and 9 for identification and ask you if you can identify them. If you can, will you please do so?

A: Yes. One was a letter which I received from Tolmage & Harris, attorneys, in which they enclosed the missing certificates that were not delivered at the closing that took place on May 14.

The second is a letter which we wrote to Sidney Tolmage acknowledging receipt of the missing certificates, and also mentioning that we delivered these certificates to Mr. Samuel Stone at 150 Broadway, New York City, against receipt.

These certificates, incidentally, were personally delivered by me to Samuel Stone, and when they were delivered I had the letter which we had received from Tolmage and Harris receipted by Samuel Stone as follows: "In accord with foregoing, received above shares." It was dated May 26.

Subsequently, since I had made delivery to Stone at the request of Pierson, I had Pierson add his signature to the receipt.

Tolmage's letter to Mastronardo of FNB transmitting the remaining 1,166.7 shares of RCC stock dated May 20, 1964 is reproduced at A-35 and is admitted by FNB to be genuine. Documents Request, A-19 and 35; Response, A-61.

FNB's letter, by Mastronardo, to Tolmage dated May 26, 1964 acknowledging receipt of the 1,166.7 shares and reporting their delivery to Pierson is reproduced at A-54 and is admitted by FNB to be genuine. Documents Request, A-21 and 54; Response, A-61.

MATERIAL FACT NO. (24)

(a) Also on May 26, at Pierson's request, Mastronardo for FNB approved certification of a check against the RCC account for \$67,000, the balance in that account, payable to RCC.

(b) The RCC account was thereafter closed by FNB.

(c) Pierson and associates subsequently wrongfully dissipated the remaining \$67,000 of RCC assets.

References

FNB admits (a) "that a check payable to RCC in the amount of the balance in the RCC account -- \$67,000 -- was drawn by RCC via Mr. Pierson and was delivered to him;" and (b) "that the RCC account with FNB was closed." Request, A-10; Response, A-16.

During the FNB Deposition, pp. 36-37, Mastronardo testified as follows:

Q: Sometime after your conversation with Mr. Olanow was the account of Roosevelt Capital Corporation transferred from the Franklin National Bank?

A: Yes. Ray Pierson and another individual, whose name I do not recall, came to the bank, issued a company check in the amount of \$67,000, the then existing balance, which we certified. This closed out the account.

Affiant's Note: It appears that the comparatively small balance which had remained in the RCC account at the Roosevelt Field Branch was simply appropriated by or distributed or credited to the sellers of RCC.

Ray E. Pierson, Francis Peter Crosby and Joseph Calise were convicted for misapplying, embezzling and/or purloining the funds of Roosevelt Capital Corporation in violation of 18 U.S.C. §657. United States v. Crosby, et al., U.S.D.C., S.D.N.Y., Docket No. 69 Cr. 404, judgments of conviction, March 26, 1971 and May 14, 1971; aff'd, 2d Cir. No. 71-1516, Sept. 16, 1971, cert.den.; Sup. Ct. No. 71-655, Feb. 22, 1972.

SIXTH: From the foregoing, it is apparent that the dissipation of the \$305,000 of cash assets of Roosevelt Capital Corporation on deposit with FRANKLIN NATIONAL BANK occurred in three steps during the period May 14-26, 1964:

(a) FRANKLIN NATIONAL BANK accepted \$160,000 of RCC corporate assets to satisfy the indebtedness of Pierson and the purchasers for whom the bank had issued the cashier's checks, knowing that the purchasers were not and could not have been RCC officers and that, in any event, the funds had been applied for purely personal purposes;

(b) FRANKLIN NATIONAL BANK knowingly facilitated the purchasers' fraudulent transfer of \$78,000 to other accounts controlled by them in a series of bizarre exchanges; and,

(c) FRANKLIN NATIONAL BANK turned over the remaining \$67,000 of RCC assets to the looters of RCC expressly because of their chicanery.

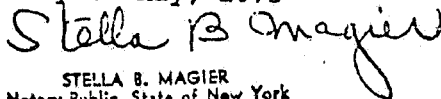
SEVENTH: Upon such facts, which are not subject to genuine dispute, plaintiff UNITED STATES OF AMERICA, an unsatisfied judgment creditor of the denuded Roosevelt Capital Corporation, is entitled to judgment as a matter of law against FRANKLIN NATIONAL BANK, for the reasons set forth in the accompanying memorandum of law.

WHEREFORE, it is respectfully submitted that summary judgment in favor of plaintiff UNITED STATES OF AMERICA and against defendant FRANKLIN NATIONAL BANK should issue, awarding to plaintiff so much of the indebtedness of FRANKLIN NATIONAL BANK to Roosevelt Capital Corpora-

tion as shall satisfy the judgment of the UNITED STATES
against Roosevelt Capital Corporation, with interest and
costs.



Sworn to before me this
15th day of May, 1973

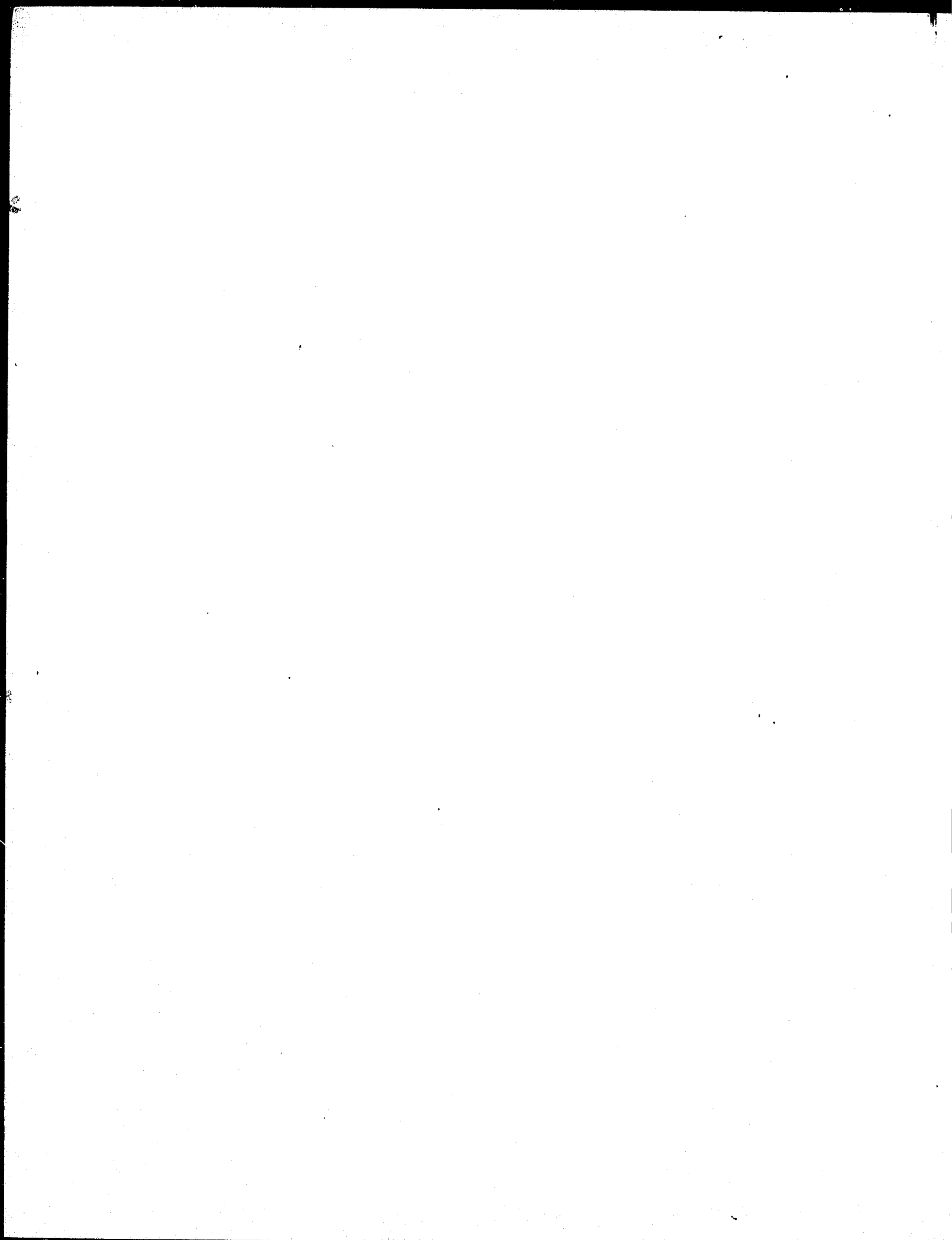


STELLA B. MAGIER
Notary Public, State of New York
No. 24-4501884
Qualified in Kings County
Commission Expires March 30, 1975

73a

Appendix to Affidavit of Henry A. Brachtl

**Request of Plaintiff United States for Admission
Under Rule 36**



JDP:HAB:sm
F.4670384

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property
of ROOSEVELT CAPITAL CORPORATION,

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.

REQUEST FOR
ADMISSION
UNDER RULE 36

Civil Action

No. 67 C 439

Plaintiff UNITED STATES OF AMERICA requests defendant FRANKLIN NATIONAL BANK within 30 days after service of this request to admit, for purposes of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial, that each of the following statements is true:

(1) ROOSEVELT CAPITAL CORPORATION ("RCC") qualified as a small business investment company pursuant to 15 U.S.C. §681, et seq., and, on February 8, 1962, borrowed \$150,000 from the UNITED STATES through the U. S. Small Business Administration ("SBA"). RCC issued an eleven year debenture to the UNITED STATES evidencing the indebtedness.

(2) (a) The loan became due and payable in 1964, however, upon breach of certain conditions of the debenture.

(b) The UNITED STATES sued on the indebtedness and was awarded judgment in the amount of \$150,000 plus interest by the United States District Court for the Southern District of New York.

(c) No amount has been collected by the

* Paragraph numbers herein correspond to paragraphs treating the same subject matter in the Statement of Plaintiff UNITED STATES OF AMERICA, Answers to Written Interrogatories, dated November 1, 1972.

UNITED STATES on said judgment.

(4) (a) On April 28, 1964, the shareholders of RCC, through Sidney Tolmage ("Tolmage"), an attorney and RCC shareholder, had agreed to sell all 15,500 shares of RCC stock to S. Lonnie Olanow ("Olanow") for \$160,000 in cash.

(b) On May 6, 1964, Olanow had, at least nominally, assigned his interest in the agreement to Ray Pierson ("Pierson").

(5) (a) On May 13, 1964, at FRANKLIN NATIONAL BANK, Hanover Square Branch, Olanow was introduced to Patrick J. Mastronardo ("Mastronardo"), then an Assistant Cashier of FRANKLIN NATIONAL BANK, Hanover Square Branch, by William J. Wallace ("Wallace"), Vice President in charge of the Roosevelt Field Branch.

(b) Olanow arranged with Mastronardo to hold the closing of the purchase and sale of RCC shares on Thursday, May 14, 1964, in a meeting room at the FRANKLIN NATIONAL BANK, Hanover Square Branch, 130 Pearl Street, Manhattan ("Hanover Square Branch").

(6) Present and participating in the closing of the sale of RCC shares at the Hanover Square Branch on May 14, 1964, were:

Patrick J. Mastronardo, Esq.	Assistant Cashier FRANKLIN NATIONAL BANK Hanover Square Branch
Sidney Tolmage, Esq.	Selling shareholder and seller's counsel and representative
Ray Pierson)
S. Lonnie Olanow	: Purchasers
Samuel Stone, Esq.) Purchasers' counsel

(7) (a) At the closing, the purchasers failed to produce the purchase price of \$160,000, and professed

to be unable to do so.

(b) Therefore, to complete the closing, Mastronardo, Tolmage, Olanow, Pierson and Stone agreed that:

(i) The sellers would receive as the purchase price \$160,000 from RCC corporate assets held for RCC's account by FRANKLIN NATIONAL BANK;

(ii) The purchasers would promptly restore the corporation's \$160,000 by depositing that amount to RCC's account at FRANKLIN NATIONAL BANK by May 19; and,

(iii) FRANKLIN NATIONAL BANK would hold the 15,500 RCC shares in escrow or as collateral to ensure the purchasers' restoration of the \$160,000 of RCC funds.

(8) At the opening of business on May 14, 1964, the 15,500 shares of common stock of RCC were owned several-ly by twenty-two shareholders, and the shareholders' equity in RCC was \$155,000, the amount of RCC's initial capitalization.

(9) (a) Also, at the opening of business on May 14, 1964, RCC had assets of

(i) approximately \$1,000 cash on deposit at the Roosevelt Field Branch of the FRANKLIN NATIONAL BANK ("Roosevelt Field Branch");

(ii) \$187,000 in matured Treasury bills held for account of RCC at the Roosevelt Field Branch; and,

(iii) accounts receivable and investments (loans to small businesses) worth \$118,000 at face value.

(b) Thus, the assets and liabilities of RCC at the opening of business on May 14, 1964 were approximately as follows:

<u>ASSETS</u>		<u>LIABILITIES</u>	
Cash on deposit at Roosevelt Field Branch	\$1,000	Debt to United States per debenture	\$150,000
Treasury bills held for RCC at Roosevelt Field Branch	187,000	<u>STOCKHOLDERS EQUITY</u>	
Accounts receivable (loans to small businesses)	118,000	Capital Stock	155,000
		Retained income	1,000
TOTAL	\$306,000		\$306,000

(10) (a) RCC's ownership of matured Treasury bills worth \$187,000 was confirmed by telephone call to William J. Wallace of the Roosevelt Field Branch.

(b) Wallace was directed to redeem the matured Treasury bills for the account of RCC and to transmit the proceeds to the Hanover Square Branch.

(c) There, the proceeds were deposited to a new account for RCC opened that day by the parties at the closing.

(11) A purported certificate of a corporate resolution of RCC and a signature card for the RCC account were prepared designating Pierson and Stone, the prospective purchaser and his counsel, as officers of RCC and authorized signatories on the new RCC account.

(12) Then Pierson, purportedly as an officer of RCC, instructed FRANKLIN NATIONAL BANK by letter to issue two cashiers checks in the amounts, respectively, of \$118,000 and \$42,000, payable to Tolmage, the seller, and to charge the checks against the RCC account.

(13) Mastronardo supplied the cashiers check for \$118,000 and \$42,000, payable to Tolmage, as requested, and prepared debit advice forms instructing the FRANKLIN NATIONAL BANK bookkeeping department to charge against the RCC corporate account the debits of \$118,000 and \$42,000.

(14) The two checks thus supplied were then tendered to and accepted by Tolmage.

(15) (a) Then, as contemplated by the sale agreement, RCC's accounts receivable, worth \$118,000 at face value, were immediately assigned from RCC to the sellers, in exchange for which Tolmage endorsed the \$118,000 cashiers check to RCC.

(b) That check was immediately deposited to the new RCC account at the Hanover Square Branch.

(16) (a) Thus, the purchasers tendered and Tolmage accepted, not \$160,000 of the purchasers' funds, but \$160,000 of RCC corporate funds, without consideration to RCC.

(b) The corporate assets were reduced by more than one half, and the corporation rendered insolvent in fraud of the corporation and its creditor, the UNITED STATES.

(17) Assuming for illustration that the debit advice forms prepared by Mastronardo to support the cashiers checks reduced the RCC account by \$160,000 at the moment made, RCC then had assets and liabilities approximately as follows:

ASSETS

Cash on deposit at
Roosevelt Field Br. \$1,000

Cash on deposit at
Hanover Sq. Br.:

Balance of pro-
ceeds of Trea-
sury bills 24/
.....\$27,000

Proceeds of
assignment of
accts recvble
.....\$118,000

\$145,000

TOTAL \$146,000

LIABILITIES

Debt to United States
per debenture \$150,000

STOCKHOLDERS EQUITY

Capital stock \$155,000

Deficit -159,000

TOTAL \$146,000

(18) (a) Actually, neither the \$118,000 and \$42,000 debits representing payment for the cashiers checks, nor the \$187,000 credit representing the deposit of the Treasury bills proceeds, were posted to an account ledger until Tuesday, May 19.

(b) On that day, the \$187,000 credit was posted to the new RCC account at the Hanover Square Branch.

(c) The \$118,000 and \$42,000 debits, however, were posted to the old RCC account at the Roosevelt Field Branch.

(19) (a) The result was to create, simultaneously, an apparent positive balance of \$227,000 in the new RCC account at the Hanover Square Branch, and an overdraft of \$159,000 in the old RCC account at the Roosevelt Field Branch.

(b) This condition was continued by FRANKLIN NATIONAL BANK until May 26 when the bank made certain "adjustment" entries, while closing RCC's accounts.

(20) (a) After the closing, on May 14, Mastronardo opened two new corporate accounts at the instance of Olanow and the latter's associates, in the names of Trans-World Theatricals, Inc. and United Film World.

(b) A check for \$60,000 was drawn against the RCC account and deposited to the new account of Trans-World Theatricals, Inc.

(c) A second check for \$60,000 was drawn against the RCC account and deposited to the new account of United Film World, which thereupon issued a check for \$42,000 which was deposited back to the RCC account, making a net transfer from RCC to United Film World of \$18,000.

(21) Thus, at the close of business on Thursday, May 14, RCC had assets and liabilities approximately as follows:

<u>ASSETS</u>		<u>LIABILITIES</u>	
Cash on deposit at Roosevelt Field Branch	\$1,000	Debt to United States per debenture	\$150,000
Cash balance at Hanover Square Branch	67,000	<u>STOCKHOLDERS EQUITY</u>	
		Capital stock	\$155,000
		Deficit	-237,000
TOTAL	\$68,000	TOTAL	\$ 68,000

(22) (a) On Friday, May 15, Mastronardo was introduced by Olanow to Joseph Calise ("Calise"). At the instance of Calise and Pierson, Mastronardo then opened a corporate account for Contractors Guild, Inc., for which Pierson was designated an officer and authorized signatory.

(b) The account was opened with the deposit of \$44,000 check drawn against the \$60,000 of RCC funds deposited the previous day in the Trans-World Theatricals account.

(23) On Monday, May 18, Mastronardo opened a personal account for Olanow.

(24) (a) Although Tolmage, acting for the sellers, had received the purchase price for the shares at the closing, he did not deliver the RCC shares to the purchasers.

(b) Instead, as agreed beforehand, to ensure that the purchasers would promptly restore the misapplied \$160,000, Tolmage delivered the shares to FRANKLIN NATIONAL BANK's officer, Mastronardo, to be held by FRANKLIN NATIONAL BANK in escrow or as collateral until the purchasers did in fact restore the \$160,000 of corporate funds to the RCC account.

(25) Because of this arrangement, and because Tolmage was able to deliver only 14,333.3 of the sellers' 15,500 shares at the closing, FRANKLIN NATIONAL BANK, and not the purchasers, received Tolmage's written undertaking to deliver, to the bank, the outstanding 1,166.7 shares, or \$10 for each share not delivered.

(26) (a) The purchasers never did restore the misapplied \$160,000 to the RCC account.

(b) Nor did they restore the \$70,000 extracted from the RCC account without consideration after the closing.

(c) Nonetheless, a week later, on May 26, FRANKLIN NATIONAL BANK not only delivered the 15,500 shares of RCC stock to the reneging purchasers, but also turned over to them the last \$67,000 which remained in the RCC account.

(27) (a) On May 18 and 19, Mastronardo attempted, unsuccessfully, to cause the purchasers to restore the \$160,000 of RCC's corporate funds and to accept delivery of the RCC shares.

(b) He concluded that the purchasers were stalling.

(28) (a) Only then, on May 20, did FRANKLIN NATIONAL BANK, through Mastronardo, make inquiry about the credit standing and trustworthiness of the purchasers.

(b) Mastronardo obtained a credit agency report that Olanow had been "charged with theft of \$190M" and had "many suits filed against him," and that "[t]wo local banks have encountered considerable difficulties and would not care to deal with subject under any circumstances."

(c) Mastronardo called the bank which Olanow had given as a reference six days earlier and was advised that Olanow "is a smooth operator" and that the bank "would not only refuse to make him a loan, but would not even open an account for him."

(29) (a) Distressed by the "highly unfavorable" reports on Olanow and by the purchasers' failure to promptly restore RCC's \$160,000 and accept the RCC shares, Mastronardo visited Olanow at the latter's office and again attempted, unsuccessfully, to obtain performance.

(b) Mastronardo then ordered Olanow to close out all accounts at FRANKLIN NATIONAL BANK which he controlled or had introduced.

(c) At the bank, Mastronardo complained by telephone to the sellers and to William J. Wallace of the Roosevelt Field Branch, who had introduced Olanow to Mastronardo, but to no practical effect.

(30) (a) Later in the day on May 20, Mastronardo visited Olanow, Pierson and their associates at an office in the financial district in Manhattan.

(b) Again, Mastronardo demanded but did not receive restoration of the corporate funds.

(c) Nonetheless, he thereupon delivered the 14,333.3 shares of RCC stock then in the bank's possession to the purchasers and received Pierson's receipt.

(31) Six days later, on Tuesday, May 26, Mastronardo visited the office of Samuel Stone, Esq. and, again without recovering RCC's \$160,000 delivered to

Stone, as the purchasers' counsel, the remaining 1,166.7 shares of RCC stock, which FRANKLIN NATIONAL BANK had received from Tolmage.

(32) (a) FRANKLIN NATIONAL BANK thereupon "adjusted" the RCC accounts at Hanover Square and Roosevelt Field branches by crediting \$160,000 to the Roosevelt Field account, eliminating the \$159,000 overdraft, and debiting \$160,000 to the Hanover Square account, reducing that account to \$67,000.

(b) FRANKLIN NATIONAL BANK then issued a check against the RCC account for \$67,000, payable to the order of RCC, and delivered it to Pierson.

(33) Whereupon the account of Roosevelt Capital Corporation, whose assets had been reduced from \$306,000 to \$67,000 was closed by FRANKLIN NATIONAL BANK.

(34) Pierson and certain associates subsequently wrongfully dissipated the remaining \$67,000 of RCC assets.

Dated: Brooklyn, New York
November 1st, 1972

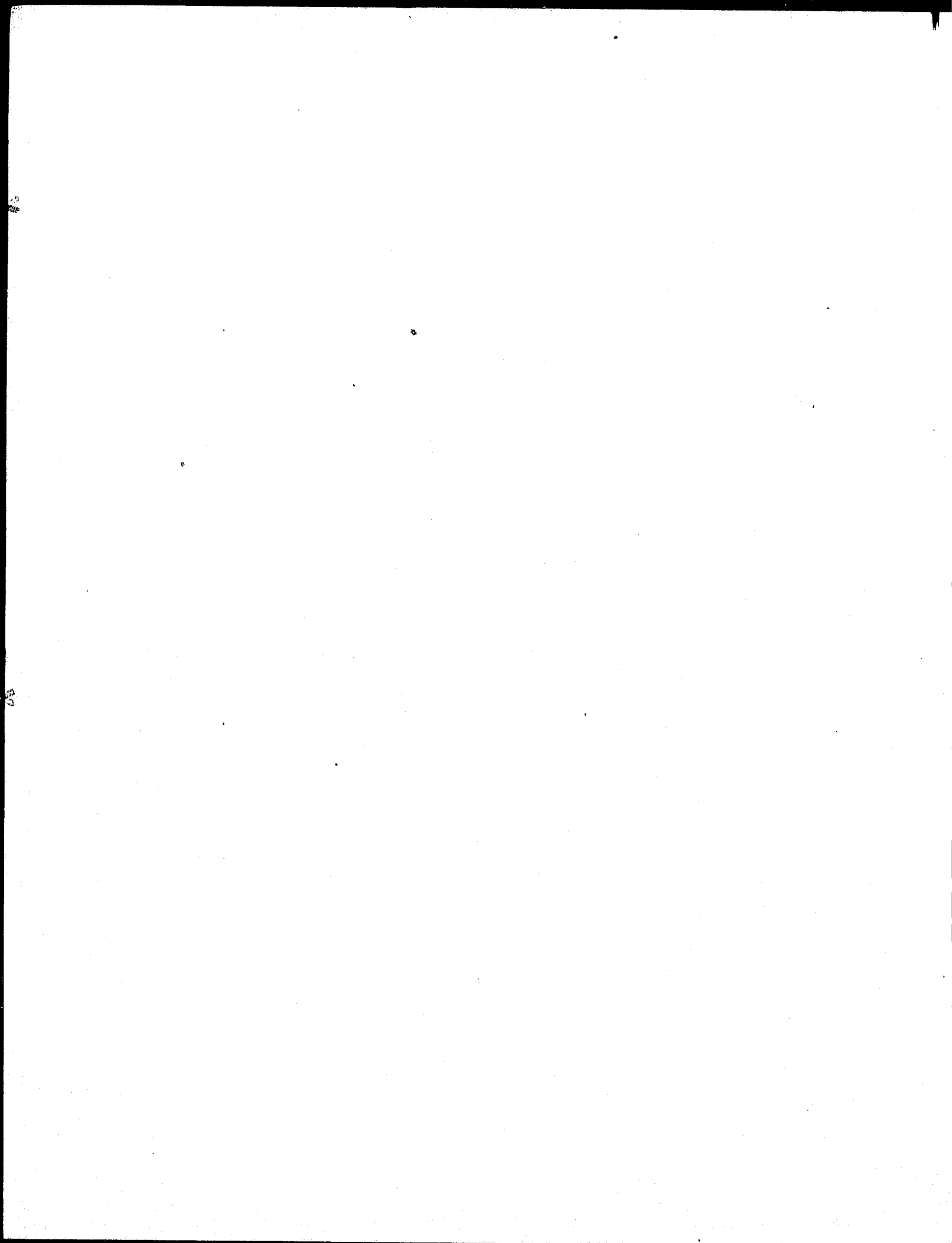
ROBERT A. MORSE
United States Attorney
Attorney for Plaintiff
United States of America

By:

HENRY A. BRACHTL
Assistant U. S. Attorney

85a

**Defendant's Response to Request for Admission
Under Rule 36**



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property of
ROOSEVELT CAPITAL CORPORATION,

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.
-----X

RESPONSE TO
REQUEST FOR
ADMISSION
UNDER RULE 36

Civil Action
No. 67 C 439

Defendant Franklin National Bank ("FNB"), in response to the Request for Admission Under Rule 36 of plaintiff United States of America, dated November 1, 1972, states as follows*:

(1) Defendant lacks sufficient information or knowledge to admit or deny.

(2)(a), (c) Same response as (1) above.

(2)(b) Admits.

(3) Defendant notes that there is no request numbered "(3)".

(4)(a), (b) Same response as (1) above.

(5)(a) Admits.

(5)(b) Denies except admits that Olanow arranged with Mastronardo that Mastronardo would have available a meeting room at the Franklin National Bank, Hanover Square Branch, 130 Pearl Street, Manhattan, on Thursday, May 14, 1964 for the purpose of a closing of the purchase and sale of Roosevelt Capital Corporation ("RCC").

* With regard to each of the following responses which state that defendant does not have sufficient information or knowledge to admit or deny, defendant states that it has made reasonable inquiry and that the information known or readily obtainable by it is insufficient to enable it to admit or deny.

(6) Denies except admits that at the closing of the sale of RCC at the Hanover Square Branch on May 14, 1964, Sidney Tolmage, Ray Pierson, S. Lonnie Olanow and Samuel Stone were present at various times, and states that it does not have sufficient information as to the capacities in which they participated, and specifically denies that Patrick J. Mastronardo participated at the said closing and admits that from time to time at the request of the participants Mr. Mastronardo was present in the meeting room.

(7)(a), (b) Denies.

(8) Same response as (1) above.

(9)(a)(i) Denies except admits that at the opening of business on May 14, 1964, RCC had assets of at least \$1,000 cash on deposit with FNB.

(9)(a)(ii) Admits.

(9)(a)(iii) Denies except admits, upon information and belief, that RCC had accounts receivable and investments worth at least \$118,000 at face value on May 14, 1964.

(9)(b) Same response as (1) above.

(10)(a) Denies except admits that RCC's ownership of matured Treasury bills worth \$187,000 was confirmed by telephone call.

(10)(b) Denies except admits that FNB was directed to redeem the matured Treasury bills for the account of RCC and to transmit the proceeds to the Hanover Square Branch.

(10)(c) Denies except admits that the proceeds of the redemption of said matured Treasury bills were thereafter deposited to a new account of RCC at the Hanover Square Branch opened by RCC on May 14, 1964.

(11) Denies except admits that a certificate of a corporate resolution of RCC and a signature card for the RCC account, including in their designation Pierson and Stone as officers of RCC and authorized signatories on the new RCC account, were delivered to FNB.

(12) Denies except admits that RCC, by Mr. Pierson, instructed FNB by letter to issue two cashier's checks in the amounts, respectively, of \$118,000 and \$42,000, payable to Tolmage, and to charge the checks against the RCC account.

(13) Admits.

(14) Admits.

(15)(a) Same response as (1) above.

(15)(b) Denies except admits that the \$118,000 check was deposited in the new RCC account at the Hanover Square Branch.

(16)(a), (b) Same response as (1) above.

(17) Defendant objects to request (17) on the grounds that it is hypothetical; but states that if it were necessary to answer the said request it would make the same response contained in (1) above.

(18)(a), (b) Admits.

(18)(c) Denies except admits that debits in the amounts of \$118,000 and \$42,000 were posted to the old RCC account.

(19)(a) Denies except admits that on May 19, 1964 the old RCC account was apparently overdrawn in the amount of \$159,129.13, and the new RCC account had a positive balance of \$227,000.

(19)(b) Denies except admits that on or about May 20, 1964 the overdrawn situation in the old RCC account was corrected by a credit in the amount of \$160,000 and further states that adjustment entries were made on May 26, 1964 in the process of closing RCC's accounts in order to correct bookkeeping errors.

(20)(a) Denies except admits that on or about May 14, 1964 Trans-World Theatricals, Inc. and United Film World opened corporate accounts at FNB and states that it does not have knowledge or information sufficient to form a belief as to whether Olanow and his associates opened the accounts.

(20)(b) Admits.

(20)(c) Denies except admits that a check in the sum of \$60,000 was drawn by RCC to the order of United Film World and deposited in the latter's account; and that United Film World drew a check in the sum of \$42,000 payable to the order of Ray Pierson which check was endorsed by Mr. Pierson and deposited in the account of RCC.

(21) Same response as (1) above.

(22)(a) Defendant lack sufficient information or knowledge to admit or deny, except admits that on or about May 15, 1964 Contractors Guild, Inc. opened a corporate account at FNB and that Pierson was included as an officer and authorized signatory.

(22)(b) Denies except admits that on or about the time the Contractors Guild account was opened a deposit was made in that account of a check in the amount of \$44,000 drawn by Trans-World Theatricals.

(23) Denies except admits that on or about May 18, 1964 Olanow opened a personal account at FNB.

(24)(a) Denies except admits that Tolmage acting for the sellers received the purchase price for the shares at the closing, did not have all the RCC shares available at that time to deliver to the purchasers, and that the parties to the closing requested Mr. Mastronardo to accommodate them by holding in safekeeping the RCC shares that were then available.

(24)(b) Denies.

(25) Denies.

(26)(a) Denies except admits that \$160,000 was not deposited in the RCC account after May 14, 1964 by the purchasers.

(26)(b) Denies.

(26)(c) Denies except admits that Mr. Mastronardo delivered the RCC shares held by him in safekeeping to the purchasers and that on or about May 26, 1964 the RCC account was closed and the balance thereof was delivered to a representative of RCC.

(27)(a) Denies.

(27)(b) Defendant objects to request (27)(b) on the grounds that it calls for a conclusion as to the mental operations of another person; but states that if it were necessary to answer the said request it would deny same.

(28)(a) Denies except admits that on or about May 20, 1964 FNB made inquiry about the credit standing of the purchasers.

(28)(b), (c) Denies except admits that the credit reports received by FNB were unfavorable and refers thereto for the language thereof.

(29)(a) Denies.

(29)(b) Denies except admits that Mastronardo ordered Olanow to close out the RCC account, his own account and all other accounts he or his associates had introduced to FNB.

(29)(c) Denies.

(30)(a) Denies except admits that on or about May 20, 1964 Mr. Mastronardo had a meeting with representatives of the purchasers.

(30)(b) Denies.

(30)(c) Denies except admits that Mastronardo delivered to representatives of the purchasers the shares of RCC stock that he had been holding in safekeeping and obtained a receipt therefor.

(31) Denies except admits that additional shares of RCC stock delivered to Mr. Mastronardo for safekeeping were turned over by him to a representative of the purchasers on or about May 26, 1964.

(32)(a) Denies except admits that on May 26, 1964 the RCC accounts were closed and adjusting entries to correct bookkeeping errors were made.

(32)(b) Denies except admits that a check payable to RCC in the amount of the balance in the RCC account -- \$67,000 -- was drawn by RCC via Mr. Pierson and was delivered to him.

(33) Denies except admits that the RCC account with FNB was closed.

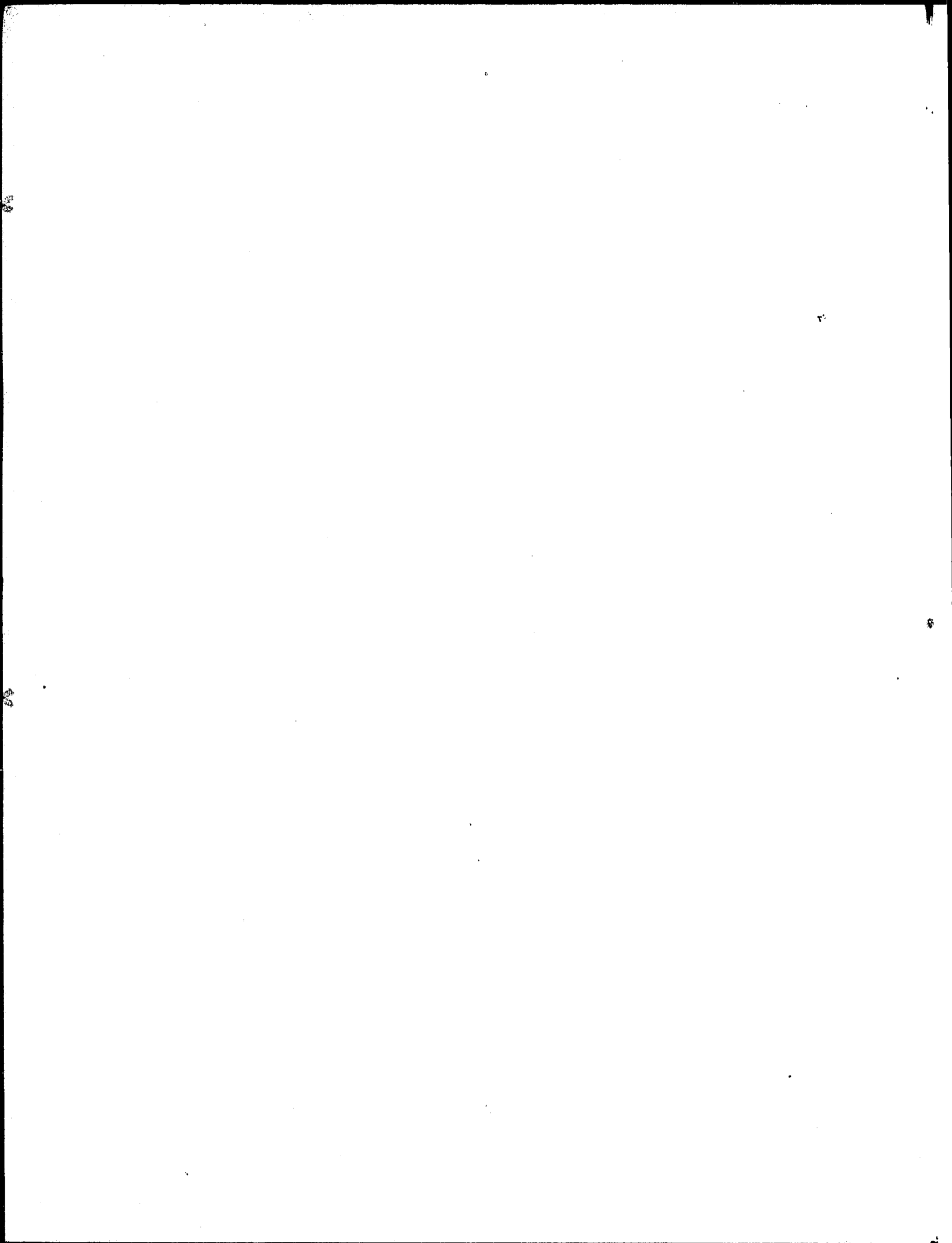
(34) Defendant lacks sufficient information or knowledge to admit or deny.

Dated: New York, New York
December 4, 1972

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
Attorneys for Defendant

93a

**Request of Plaintiff United States for Admission of
Genuineness of Documents Under Rule 36**



JDP:HAB:sm
F. #670384

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property
of ROOSEVELT CAPITAL CORPORATION,

Plaintiff,

-against-

FRANKLIN NATIONAL BANK,

Defendant.

Civil Action
No. 67 C 439

REQUEST FOR
ADMISSION OF
GENUINENESS OF
DOCUMENTS UNDER
RULE 36, F.R.Civ.P.

Plaintiff UNITED STATES OF AMERICA requests
defendant FRANKLIN NATIONAL BANK within 30 days after ser-
vice of this request to admit, for the purpose of this
action only and subject to all pertinent objections to
admissibility which may be interposed at the trial, that
each of the following documents, copies of which are ap-
pended to this request, are genuine:

Attachment
Letter

Description

H*

FRANKLIN NATIONAL BANK ("FNB") file
memorandum by William J. Wallace,
Jr., with attached list of Roosevelt
Capital Corporation ("RCC") shareholders,
dated February 16, 1962.

L

Letter of S. Tolmage to S. Stone dated
May 14, 1964 confirming Tolmage's instruc-
tions to Franklin National Bank to release
to RCC \$187,000, proceeds for redemption
of Treasury bills held for RCC.

M

FNB new account advice form for account of
RCC Hanover Square Branch, dated May 14,
1964.

* Attachment identification letters herein correspond to
letter designations identifying copies of the same
documents as appended to the Statement of Plaintiff
UNITED STATES OF AMERICA, Plaintiff's Answers to Written
Interrogatories, dated November 1, 1972.

Attachment
Letter (cont'd)Description (cont'd)

- N FNB credit advice form crediting \$187,000 proceeds of redemption of Treasury bills to RCC account at the Hanover Square Branch, dated May 14, 1964.
- O Purported certificate of S. Stone as ostensible secretary of RCC, dated May 14, 1964, certifying an RCC corporate resolution designating S. Wallen, R. Pierson and S. Stone as officers and signatories for RCC.
- P FNB signature card for RCC account at the Hanover Square Branch, dated May 14, 1964, listing as officers S. Wallen, R. Pierson and S. Stone.
- Q Purported letter of RCC by R. Pierson to FNB dated May 14, 1964 requesting issuance of two official checks to order of S. Tolmage in the amounts of \$118,000 and \$42,000, respectively.
- R FNB official check No. 7531417 (front and back) to order of Sidney Tolmage for \$42,000, dated May 14, 1964, with endorsement.
- S FNB official check No. 7531418 (front and back) to order of Sidney Tolmage for \$42,000, dated May 14, 1964, with endorsement.
- T Assignment by RCC, by C. Shapiro as President, of RCC interest in certain accounts receivable and securities to Roosevelt Capital Company, a partnership formed by the sellers of RCC, the corporation, dated May 14, 1964.

Attachment
Letter (cont'd)Description (cont'd)

U	Account ledger for account of RCC at Hanover Square Branch for period May 14-26, 1964.
W	Letter of S. Tolmage to FNB dated May 14, 1964 acknowledging receipt from FNB of \$160,000 and obligation to deliver to FNB 1,166.7 shares of RCC stock not previously delivered, subject to penalty of \$10 per undelivered share, bearing acceptance of FNB by P. J. Mastronardo.
X	Letter of S. Tolmage to FNB, P. J. Mastronardo, Asst. Cashier, dated May 20, 1964 transmitting 1,166.7 shares of RCC stock pursuant to letter and agreement of May 14, 1964.
Y-1	FNB new account advice form for account of Trans-World Theatricals, Inc., dated May 14, 1964.
Y-2	Account ledger for account of Trans-World Theatricals, Inc., dated May, 14, 1964.
Z-1	FNB new account advice form for account of United Film World, dated May 14, 1964.
Z-2	Account ledger for account of United Film World at FNB for period May 14-29, 1964.

Attachment
Letter (cont'd)

Description (cont'd)

AA-1 and
AA-2

Contemporary notes by P. J. Mastronardo of inter-account activity of RCC, Trans-World Theatricals, Inc., United Film World and Contractors Guild, Inc.

BB-1

FNB new account advice form for account of Contractors Guild, Inc., dated May 14, 1964.

BB-2

Account ledger for account of Contractors Guild, Inc. at FNB for period May 14-29, 1964.

BB-3

FNB signature card for Contractors Guild, Inc. dated May 15, 1964 designating R. Pierson and J. Calise as officers and signatories for Contractors Guild.

CC

FNB new account advice form for account of Lonnie Olanow, dated May 18, 1964.

DE

Account ledger for account of RCC at Roosevelt Field Branch, FNB, for period April 30 - May 26, 1964.

EE

FNB file memorandum of Proudfoot agency credit report on Samuel Olan (Olanow) obtained by P. J. Mastronardo.

FF

FNB file memorandum recording comments of officer of Toronto Dominion Bank on credit and trustworthiness of Olanow, dated May 20, 1964.

GG

Receipt acknowledging receipt of 14,333.3 shares of RCC stock signed by Ray E. Pierson, with handwritten note of Mastronardo dating delivery at May 20, 1964.

Attachment
Letter (cont'd)

Description (cont'd)

HH

Letter of FNB by Mastronardo to S. Tolmage dated May 26, 1964 acknowledging Tolmage letter of May 20, 1964 and reporting delivery of remaining 1,166.7 shares of RCC stock as acknowledged by S. Stone and R. Pierson on attached copy of Tolmage letter.

II

FNB debit advice form debiting \$118,000 and \$42,000 to RCC account at Hanover Square Branch "To close a/c," dated May 26, 1964.

JJ

FNB debit advice form recording debit to RCC account at Hanover Square Branch to support cashiers checks paid to Tolmage, dated May 26, 1964.

KK

FNB official check to order of RCC in the amount of \$67,000 dated May 26, 1964.


LL

FNB memorandum of P. J. Mastronardo dated May 25, 1964 purporting to record events of May 14-26, 1964 relating to purchase and sale of RCC.

Dated: Brooklyn, New York
November 1, 1972

ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Plaintiff
United States of America

By:


HENRY A. BRACHTL
Assistant U. S. Attorney

February 16, 1962

Branch 1, Department
Reservoir Field Office

William J. Wallace, Jr.
Reservoir Field

Franklin Corp. Corp.

The subject recently was licensed as an SBIC. It was incorporated for
\$1,500 and has been at this office for the past two months while awaiting
licensing.

They asked that we keep them in mind if and when we have any investment
prospect which would not fit into the philosophy of the Franklin Corp.

I am attaching a listing of the sponsors and you will note that there are
several rather substantial individuals involved.

Kindly return after you have had an opportunity to review.

WJW:ml
Encl.

EXHIBIT H

BEST COPY AVAILABLE

022

ROOSEVELT CAPITAL CORP. INVESTORS

BRONFMAN, JULES	Research Professor of Economics, NYU Director, Seafordale Nat'l Bank & Trust Co. Economic Advisor to Railroads & Steel Industry.
BURGER, HENRICH J.	Foreign Trade. Burger International, 101 W. 30th St., NY. Consultant to Dept of Commerce.
BLACH, PAUL	Real Estate Investments. 90-50 Parsons Blvd. Jamaica
BLACH, WALTER	Attorney. 90-50 Parsons Blvd. Jamaica
BAKER, OSCAR	President. Inland Credit Corp. 11 W. 42nd St NY
DESCHAMPS, MARCEL	Partner. Langner, Parry, Card & Langner 10 Columbus Circle, NY. International patent attorneys
DESCHAMPS, SIDNEY	Partner. Langner, Parry, Card & Langner
DELMAN, ALEXANDER	Attorney, 600 Old Country Rd. Garden City, NY
JAKENBRUGH, MARTIN R.	Chief Economist of National Industrial Conference Bd. President American Statistical Association Member President's Committee on Unemployment.
GOLDENRITH, S. DELVALLE	Partner. Langner, Parry, Card & Langner
GROSS, AARON	Insurance. J. E. Gross Co. 580 Fifth Ave. NY
KALISH, ISRAEL	CPA. Kalish, Rubinroit Co. 280 Broadway NY
KAND, MARTIN	Chairman of Board, Arcs Industries, Huntington LI Director of Commercial Bank of No. America
KATZ, HOWARD	Builders. Sherwood Realty, 301 Mill Rd Hewlett LI
KATZ, IRA	Builders. Sherwood Realty, 301 Mill Rd Hewlett LI
LEVY, SAMUEL J.	Packaging mfg. President, Cellu-Craft Prods. Corp. New Hyde Park, LI
CHITZ, BEN	Builder. Ben Okun Associates, 90-50 Parsons Blvd Jamaica
RUBENROIT, HIRSH M.	CPA. Kalish, Rubinroit Co. 280 Broadway NY
LECHART, AARON M.	Partner, Langner, Parry, Card & Langner
SCHLESINGER, VICTOR M.	CPA. George M. Sachs & Co. 19 W 44th St NY
SHAPIRO, CHARLES	Real Estate. Charles Shapiro Associates, 600 Old Country Rd. Garden City, NY
COENIG, SIDNEY	Attorney. Tolmage & Harris, 30 Vesey St. NY

Clf. 8/1/64
3/24/65 R

~~FRANKLIN NATIONAL BANK~~
~~INTERNATIONAL BANKING DEPARTMENT~~
~~HANOVER SQUARE, 150 BROAD STREET~~
~~NEW YORK, N.Y. 10015~~

May 14, 1964.

Samuel Stone, Esq.
150 Broadway
New York, N. Y.

Re: Sale of Stock of Roosevelt Capital Corporation

Dear Sir:

I am confirming to you that I have today instructed Mr. William Wallace, Jr., Vice President of the Franklin National Bank at Garden City, N. Y. to release to the Roosevelt Capital Corporation \$187,000, the proceeds of Treasury bills which were on deposit with the Garden City Branch of Franklin National Bank to the credit of the Roosevelt Capital Corporation.

Very truly yours,

[Signature]
~~Patrick J. Masterson~~
Assistant Cashier

FRANKLIN → SIDNEY TOLMAGE
TOLMAGE + HARRIS
26 VESEY STREET
NEW YORK 7, N.Y.

EXHIBIT L

103a

NEW ACCOUNT ADVISE
HANOVER SQUARE

ACCOUNT # 02-01-032-0

DATE OPENED: 5/14/64

TITLE OF ACCOUNT: ROOSEVELT CAPITAL CORP.

TEL. # Olanow HA 5-3162

ADDRESS: 150 BROADWAY, ROOM 606
NEW YORK, N.Y.

Em Stone BA 7-3936

AFFILIATES:
INTRODUCED BY:

Ray Furman at Shillman 146
Room 1502 - MU 9-5

EMPLOYED BY:

POSITION:

BANK REFERENCE: TORONTO DOMINION BANK, TORONTO (OLANOW)

FIRST WESTERN BANK & TRUST CO., 3072 WILSHIRE BLVD., LOS ANGELES
(PIERSON)

DOCUMENTATION:

TWO SIGNATURE CARDS

TO FOLLOW

LEGAL PAPERS

CHECK BOOK

INITIAL DEPOSITS 6 127,000
CHECK INFO:

CASH\$

CHECK\$

COMMENT:

S. Linné Olanow is opening the company, a Roosevelt
Field account, and was introduced to the writer by Paul
Wallace, V.P. Investigating reference in principle.

Account to close

EXHIBIT M

OPENED BY:

PJM

CREDIT

ACCOUNT

02-01-032-01
Treasury Co.

DATE

5-14-67

DESCRIPTION

AMOUNT

Proceeds from selling bill for account Corp. credited to name	L. J. Tamm et al Capital in the	187 000 00
APPROVED BY <i>[Signature]</i> 55/2 MAY 63	TOTAL	187 000 00

DO NOT WRITE IN AREA BELOW

00201 032 01

61,00167000000

EXHIBIT N

026

I, the undersigned, Secretary of

ROOSEVELT CAPITAL CORP

DO HEREBY CERTIFY that at a meeting of the Board of Directors of said corporation, duly held on the 14th day of May, 1964 a quorum being present, the following resolutions were unanimously adopted and recorded in the minute books of said corporation, kept by me, and are in accord with and pursuant to the charter and by-laws of said corporation, and are now in full force and effect, to wit:

RESOLVED, that

1. FRANKLIN NATIONAL BANK, Minneola, N. Y. (hereinafter referred to as Bank) be and hereby is designated as a depository of this corporation, and it is hereby authorized to pay, cash or otherwise honor and charge to this corporation any and all checks, notes, drafts, bills of exchange, acceptances, orders or other instruments for the payment of money or the withdrawal of funds, when signed, made, drawn, accepted or indorsed on behalf or in the name of this corporation by any person then holding any of the following offices or by any of the following named signatories, without counter-signature or co-signature except to the extent indicated as follows:

2. Said Bank is further authorized to pay, cash or otherwise honor and charge to this corporation any such instrument without regard to any notation on any part thereof indicating the effect, purpose or condition of its issuance, delivery, receipt or acceptance, and without regard to any alteration, defacement or erasure of such notation, and said Bank is expressly relieved of any duty on its part to pass upon the regularity of such notation, or to make any inquiry in respect thereof or in respect of any alteration, defacement or erasure thereof. Said Bank may conclusively assume that the date of any such instrument, acceptance or indorsement is the true date of the making, drawing, acceptance or indorsement, as the case may be, completed in each instance by delivery on that date.

3. Said Bank is hereby authorized to pay, cash or otherwise honor and charge to this corporation any such instrument and any instrument payable to or held by this corporation when indorsed as aforesaid, and also to receive same for credit to the account of or in payment from the payee, indorsee or any other holder thereof (including any officer, agent or signatory of this corporation), without limitation of amount and without inquiry as to the circumstances of issue, negotiation or indorsement thereof or as to the disposition of the proceeds thereof, even if drawn, indorsed or payable to cash, bearer or to the individual order of any signing officer, agent or signatory, or tendered in payment of his individual obligation.

4. Indorsements on behalf of this corporation upon any and all commercial paper of any kind deposited by or on behalf of this corporation with the said Bank for credit or for collection or otherwise, may be made, affixed or imprinted (manually or by stamp impression) by any one of the foregoing officers or signatories or by any other person authorized or purporting to be authorized so to do, and any case the indorsement may bear the name of this corporation alone without specifying the person who made, affixed or imprinted the same or his authority so to do.

5. Any one of the foregoing officers of this corporation is hereby authorized to borrow money and to obtain credit for this corporation from said Bank on such terms as may seem to him advisable, and to deliver notes, drafts, acceptances, agreements and any other obligations of this corporation therefor in form satisfactory to said Bank, signed as designated in paragraph 1 above, and as security therefor to assign, transfer, hypothecate, mortgage, pledge, trustee, withdraw, exchange and substitute any stocks, bonds, securities, bills and accounts receivable, bills of lading, warehouse receipts or any other property of this corporation, with full authority to indorse or guarantee the same in the name of this corporation, to execute and deliver all instruments of assignment, transfer, hypothecation, mortgage, pledge and trust, and to affix the corporate seal. Any one of the officers or any one of the aforementioned signatories of this corporation acting alone is hereby authorized to discount any bills receivable or paper of any kind (negotiable or otherwise) with full authority to indorse the same in the name of this corporation.

6. All the foregoing authorities shall and continue in full force and effect until revoked or modified by written notice actually received by said Bank setting forth a resolution to that effect stated to have been adopted by the Board of Directors of this corporation, and signed by one purporting to be the secretary or an assistant secretary of this corporation and bearing the purported seal of this corporation; and said Bank is hereby authorized at all times to rely upon the last notice, certificate or communication received by it, when so authenticated, as to any resolution of this corporation, or as to the persons who from time to time may be officers or signatories of this corporation, or as to their respective signatures and/or as to any other corporate matters, and Bank shall be harmless in such reliance.

7. That the secretary (or any assistant secretary) of this corporation is hereby authorized to certify and deliver to said Bank copies of these resolutions, and that the signatures of the president (or any vice-president) and the secretary (or any assistant secretary) of this corporation at the foot of the certificate containing these resolutions shall constitute such certificate and resolutions an agreement by this corporation with said Bank with respect to all matters set forth in said certificate and resolutions.

I FURTHER CERTIFY that the persons herein designated as officers of this corporation have been duly elected to and now hold the offices in this corporation set opposite their respective names, and that the following are the authentic, official signatures of the said respective officers and of the named signatories who are not corporate officers, to wit:

Stewart Wallen

Name (Print or Type)

(Signature)

President

Ray Pierson

Name (Print or Type)

(Signature)

Vice-President

Samuel Stone

Name (Print or Type)

(Signature)

Secretary

Name (Print or Type)

(Signature)

Treasurer

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation by order of the Board of Directors this 14th day of May, 1964

AFFIX SEAL BELOW

I, the undersigned, President of the corporation above named, do hereby certify that the foregoing certificate is in all respects true and contains a true copy of the resolutions regularly adopted by the Board of Directors of said corporation in the manner therein stated.

Vice-President

EXHIBIT O

ROOSEVELT CAPITAL CORP. <small>CORPORATION</small>		02 01 037 0			
TO FRANKLIN NATIONAL BANK		ACCOUNT CODE NUMBER			
<p>You are authorized to recognize any (*)</p> <p>of the signatures subscribed below in the payment of funds or the transaction of any business for this account. It is agreed that all transactions between you and the undersigned shall be governed by the contract printed on the reverse side of this card.</p>					
(*) Indicate Number of Signatures Required		BY <u>John J. [Signature]</u> Secretary			
PRINT NAME	<u>John J. [Signature]</u>	SIGNATURE		PRES.	
PRINT NAME	<u>[Signature]</u>	SIGNATURE		VICE-PRES.	
PRINT NAME	<u>[Signature]</u>	SIGNATURE		SECTY.	
ADDRESS		PHONE NO.		TREAS.	
<u>C/O Mr Samuel Stone 150 Broadway, New York, N.Y.</u>					
DATE OPENED	INTRODUCED BY	INITIAL DEPOSIT	ACCOUNT OPENED BY		
<u>5/14/64</u>		<u>\$127,000</u>	<u>PJM</u>		

EXHIBIT P

028

107a


May 14, 1964

Franklin National Bank
130 Pearl Street
New York, New York 10015

Gentlemen:

Please issue your official checks to
order of Sidney Tolmage in the amounts of
\$42,000.00 and \$118,000.00 for delivery
to him.

Very truly yours,



Roosevelt Capital
Corporation

EXHIBIT Q


		FRANKLIN NATIONAL BANK		7 531417
MINEOLA, N. Y.		May 14, 1964		50-1211 514
PAY TO THE ORDER OF		FRANKLIN NAT'L BANK		
SIDNEY TOLMIE		\$118000 AND 00 CTS		
MAY 13 1964		OFFICIAL CHECK		
501211		AUTHORIZED SIGNATURE		

Photo 3-18
4/18/65

00211-12111

#00118000000

Pay to the order of
the Board of Capital
Expenditure
John J. Tolmie

FRANKLIN NATIONAL BANK 7 531418

MINEOLA, N. Y. May 14, 1964

50-1211
214

PAY TO THE ORDER OF **SIDNEY TOLMAGE**

FRANKLIN NATIONAL BANK OFFICIAL CHECK

2 FRANKLIN 53142000 AND 00 CTS

MAY 20 1964

ROOSEVELT

[Signature]
AUTHORIZED SIGNATURE

P/K/F/E
4/18/64 012 60244 12244

Sidney Tolmaga

THE ORDER OF
IRVING TRUST COMPANY
NEW YORK, N. Y.
TOLMAGE & HARRIS, SPECIAL AGENTS
NEW YORK

1-67

CH 4435 MAY 15 31 33200

BC 5967 MAY 20 64 0003

REC'D NEW YORK
MAY 20 1964

KNOW ALL MEN by these presents, that
Roosevelt Capital Corporation, a corporation organized and
existing under and by virtue of the laws of the State of New York,
with its principal place of business at 600 Old Country Road, Garden
City, New York, in consideration of One (\$1.00) Dollar and other
good and valuable consideration paid by ROOSEVELT CAPITAL
COMPANY, with its principal place of business at 600 Old Country
Road, Garden City, New York, (herein called "Assignee), hereby
assigns to the assignee, all of its right, title and interest in and
to,

(1) a certain debt owing by The Sorbel Co. Inc.,
together with the notes and all collateral security securing said
debt;

(2) A certain debt owing by Alho Corporation,
together with the notes and all securities and collateral in
connection therewith.

(3) All the capital stock and debenture bonds which
Roosevelt Capital Corporation owns in a corporation known as
National Automation Corporation.

IN WITNESS WHEREOF, the undersigned has hereunto
signed its name and affixed its seal the 14th day of May, 1964.

Roosevelt Capital Corporation

By [Signature]
President

EXHIBIT T

111a

LEDGER

ROSS WELLS CAPITAL CORP.
150 BROADWAY
NEW YORK, N. Y.

02-01-032-0

Ross Wells Capital Corp.
40 Broad Street
150 Broadway
02-01-032-0

DEPOSITS & CHECKS	CHECKS & ANALYSIS	NO. OF CHECKS	DATE	BALANCE
*160,000.00+	15000 3.20		MAY 15 64 *	.00 S
* 60,000.00-		1	MAY 15 64 *	160,000.00 P
* 60,000.00-		2	MAY 15 64 *	100,000.00 <i>2500 cc</i>
*187,000.00+CH		2	MAY 18 64 *	40,000.00 <i>2500 cc</i>
* 67,000.00-CC	160,000.00-DK	4	MAY 19 64 *	227,000.00 <i>2500 cc</i>
			MAY 26 64 *	.00 <i>2500 cc</i>
				6
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				40

Unsatisfactory
Requested to
close

FRANKLIN NATIONAL BANK

C6701A-1 LB

EXHIBIT U

033

112a

SIDNEY TOLMAGE
20 Vesey Street
New York 7, N.Y.

May 14, 1964.

Franklin National Bank
130 Pearl Street
New York, N. Y. 10015

Gentlemen:

I have received from you today two checks totaling \$160,000 pursuant to an agreement dated April 28, 1964 between S. Louis Olanow and myself. I still owe you 1165.7 shares of stock of Roosevelt Capital Corporation.

I will make every effort to procure these shares. In the event I am not able to deliver these shares properly endorsed to you within thirty days from date hereof, I will deliver to you my check for \$10.00 for cash and every share which I do not deliver.

Yours very truly,

Sidney Tolmage

Accepted
Franklin Nat. Bank
S. Louis Olanow

11/16/64 C
4/16/65

113a
LAW OFFICES
TOLMAGE AND HARRIS
20 VESEY STREET
NEW YORK 7, N.Y.

JEANNETTE H. HARRIS
SIDNEY TOLMAGE
ALAN S. WOLPER
IRVING WAXMAN

WORTH 4-1390
AREA CODE 212
CABLE: TOLHARLEY, N. Y.
ISIDORE BERGNER
COUNSEL

May 20, 1964

Registered Mail
Return Receipt

Mr. Patrick J. Mastronardo
Assistant Cashier
Franklin National Bank
8 Hanover Square
New York, New York

Re: Roosevelt Capital Corp.

Dear Sir:

Pursuant to my letter to you dated May 14, 1964,
wherein I stated that there was still 1166.7 shares of stock of Roosevelt
Capital Corp. due you, I am herewith enclosing the following:

1. Certificate #14 for 500 shares of Roosevelt
Capital Corp., endorsed by Ira Katz;
2. Certificate #17 for 666-7/10 shares of
Roosevelt Capital Corp., endorsed by Ben Okun.

I do not owe you any further stock.

Would you be kind enough to acknowledge receipt of
this letter and the enclosures.

In accord with foregoing.
Received above shares.

Samuel Stong
May 26, 1964
ST:EK
Enclosures

Very truly yours,

TOLMAGE AND HARRIS

Sidney Tolmage

EXHIBIT X

035

114a

NEW ACCOUNT ADVICE
RANGE DATE

ACCOUNT # 01-01-035-3

DATE OPENED: 5/14/64

TITLE OR ACCOUNT: Trans-World News, Inc. TEL. #

ADDRESS: 200 WEST 57TH STREET
NEW YORK CITY 19, NY

PL 7-7671
(Telephone disconnected)

AFFILIATES:
INTRODUCED BY: Lonnie Olanow

EMPLOYED BY:

POSITION

BANK REFERENCE:

DOCUMENTATION:

TWO SIGNATURE CARDS

TO FOLLOW

LEGAL PAPERS

CHECK BOOK

INITIAL DEPOSITS 60,000 —
CHECK INFO:

CASH\$

CHECKS\$ 60,000 (X)
issued by Foremost Capital
Corp. on FNB, Harrisburg.

COMMENT: See new account Foremost Capital Corp

Account to close See memo 5/25/64 on
Lonnie Olanow

(X) (Company immediately issued a \$10M check to International Paper Co.
and a \$44M check to Continental Steel, Inc.)

OPENED BY: PJM

EXHIBIT Y-1

036

115a

LEDGER

TRANS-WORLD THEATRICALS INC.
200 WEST 57TH STREET
NEW YORK, N. Y.

02-01-035-9

Trans-World Theatricals
200 West 57th St. N.Y., N.Y.
02-01-035-3

\$ 62,434-
12-000

DEPOSITS & CHECKS	CHECKS & ANALYSIS	NO OF CHECKS	DATE	BALANCE
* 60,000.00+	6000 1.21		MAY 18 64	* .00 S
* 10,000.00-CH		1	MAY 18 64	* 50,000.00 $\frac{1}{2}$
* 500.00-	1,000.00-			$\frac{3}{2}$
* 500.00-	44,000.00-	5	MAY 19 64	* 4,000.00 $\frac{2}{2}$
* 300.00-	2,000.00-	7	MAY 20 64	* 1,700.00 $\frac{2}{2}$
* 500.00-		8	MAY 21 64	* 1,200.00 $\frac{2}{2}$
* 1,500.00-		9	MAY 22 64	* 300.00 $\frac{2}{2}$
* 1,500.00-CH		8	MAY 22 64	* 1,200.00 $\frac{2}{2}$
* 3.00-DM		9	MAY 23 64	* 1,197.00 $\frac{2}{2}$
* 500.00-		10	MAY 26 64	* 697.00 $\frac{2}{2}$
* 650.00-	7.00-	12	MAY 27 64	* 40.00 $\frac{2}{2}$
				$\frac{12}{13}$ <i>Am</i>
				$\frac{13}{14}$ <i>5.21</i>
				$\frac{14}{15}$ <i>SP</i>
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FRANKLIN NATIONAL BANK

C67014-1 LS

116a

NEW ACCOUNT ADVICE
HANOVER SQUARE

02-01-033-8
ACCOUNT # UNITED FILM WORLD

DATE OPENED: 5/14/64

TITLE OF ACCOUNT:

TEL.# BA 7-3936

ADDRESS: C/O SAM STONE, 150 BROADWAY,
NEW YORK, N.Y.

AFFILIATES:
INTRODUCED BY: LONNIE OLANOW

EMPLOYED BY:

POSITION:

BANK REFERENCE:

DOCUMENTATION: TWO SIGNATURE CARDS
LEGAL PAPERS

TO FOLLOW

CHECK BOOK

INITIAL DEPOSITS 60,000 —
CHECK INFO:

CASH\$

CHECKS\$

COMMENT:

See new account Roosevelt Capital Corp
02-01-032-0

Account to close See memo 5/25/64
in Lonnie Olanow in file *[initials]*

OPENED BY: PJM

Code 4-4

EXHIBIT 2-1
038

117a

LEDGER

United Film World 02-01-033-8
 c/o Sam tons
 150 Broadway
 New York, N.Y.

DEPOSITS & CHECKS	CHECKS & ANALYSIS	NO. OF CHECKS	DATE	BALANCE
* 60,000.00+	6000 1.20		MAY 18 64 *	.00 S
* 42,000.00-		1	MAY 15 64 *	60,000.00 *
* 10,000.00-02		2	MAY 15 64 *	10,000.00 *
* 750.00-		3	MAY 15 64 *	8,000.00 *
* 250.00-		4	MAY 18 64 *	7,250.00 *
* 6,950.00-00	500.00-	5	MAY 20 64 *	7,000.00 *
* 500.00-00		6	MAY 26 64 *	50.00 *
* 50.00-02			MAY 29 64 *	.00 *
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FRANKLIN NATIONAL BANK

ENC

EXHIBIT 2-2
039

1/1/37
3/15/65

United Film World
14-64

02-01-033-8

Reported

Withdraw

Chapman from Cap 60M

to pay Person 10M

pay Person 42M

(5/15) Cash 750

52,750

Universal Theatrical Inc.

02-01-035-3

Reported

Withdraw

Chapman from Cap 60M

to last Person 10M

Conte Fund 44M

54

Bd 4/1/65

Contractor Fund

02-01-045-2

Reported

to pay Universal 44M

EXHIBIT AA-1

Rosenthal Capital

(02-01-033-0)

5/14/64Deposited

Withdraw

Trans Bank	187M
Off Cr (interest)	118M
United Falm World	42M
	<u>347M</u>

Off Cr	118M
Off Cr	42M
to United Falm (Cr)	60M
	<u>220M</u>

11/5/64

to Transworld 60M

280M

247

160

407

UNITED Film Works
150 Broadway,
New York

Paying

(from book) 60M

Ray Parson 10M
Ray Parson 42M
paid 750

TRANSWORLD THEATRICALS, INC

REC'D

Crych Book Co 60M

PAID

Crych to Rtl Claytons 10M
" " Contractors Guild 44M

Contractors Guild

Crych Transworld 44M

1000 CAPITAL

5/14/64

REC'DPAID

TREAS PILLS 187 M

OFF. C.K. FNB 118 M

LFW CR L.A. PERMAN 42 M

\$ 347 M

OFF CR (SIDNEY TOLMAN) 118 M

OFF CR (SIDNEY TOLMAN) 42 M

CORP CR (UF) 60 M

\$ 220 M

5/15/64

Corp CR to Transmitted 60 M

250 M

67

RHS

122a

NEW ACCOUNT ADVICE
HANOVER SQUARE

ACCOUNT # 02-01-045-2

DATE OPENED: 5/15/64

TITLE OF ACCOUNT: CONTRACTOR GUILD, INC.

TEL. # BA 7-3936

ADDRESS: 150 BROADWAY, ROOM 606
NEW YORK, N.Y.

AFFILIATES:

INTRODUCED BY: LONNIE OLANOW

EMPLOYED BY:

POSITION:

BANK REFERENCE:

DOCUMENTATION:

TWO SIGNATURE CARDS

TO FOLLOW

LEGAL PAPERS

CHECK BOOK

INITIAL DEPOSITS 44,000
CHECK INFO:

CASH\$

CHECKS\$

COMMENT:

See new account records Capital Corp.
Introduced by LONNIE OLANOW. Address in that
of Samuel Stone, attorney.

Account to close (See memo in file)

ACCOUNT REOPENED 6/4/64

OPENED BY: PJM

EXHIBIT BB-1

044

123a

LEDGER

CONTRACTOR'S GUILD INC.
 125 E. 42ND ST.
 NEW YORK, N. Y.

02-01-015-2

DEPOSITS & CHECKS	CHECKS & ANALYSIS	DATE	BALANCE
* 1/15/64	44,300.00 - 21	1/15/64	44,300.00
* 1/15/64		1	44,300.00
* 1/15/64	6,530.00 -	5	10,730.00
* 1/15/64	10,730.00 - 00	7	10,730.00
* 1/15/64	117.00 -	8	10,613.00
* 1/15/64		11	8,400.00
* 1/15/64	200.00 -	13	7,533.00
* 1/15/64	150.00 -	18	5,604.00
* 1/15/64	252.36 -	19	5,351.64
* 1/15/64	182.36 -	23	604.00
* 1/15/64		25	504.00
* 1/15/64	100.00 -	26	404.00
* 1/15/64	80.00 -		
* 1/15/64	534.07 - 00		

FRANKLIN NATIONAL BANK

EXHIBIT BB-2

124a

TO FRANKLIN NATIONAL BANK		ACCOUNT CODE NUMBER	
<p>of the signatures of all persons in the possession of funds of the transaction of any business for this account. It is a condition of all transactions between you and the undersigned that they be governed by the contract printed on the back of this card.</p>			
PRINT NAME	SIGNATURE	VICE-PRES	
PRINT NAME	SIGNATURE	VICE-PRES	
PRINT NAME	SIGNATURE	SECTY.	
PRINT NAME	SIGNATURE	TREAS.	
ADDRESS		PHONE NO.	
DATE OPENED	INTRODUCED BY	INITIAL DEPOSIT	ACCOUNT OPENED BY
8/15/64	W. C. LAMON	\$44,000	P. M. O.

EXHIBIT BB-3

BEST COPY AVAILABLE

046

125a

NEW ACCOUNT ADVISE
HANOVER SQUARE

ACCOUNT # 02-10-0212

DATE OPENED: 5/12/64

TITLE OF ACCOUNT: LONNIE OLANOW

TEL.# HA 5 3100

ADDRESS: 30 BRAD STREET, 35TH FLOOR
NEW YORK, N.Y.

AFFILIATES:
INTRODUCED BY:

EMPLOYED BY:

POSITION:

BANK REFERENCE: TORONTO DOMINION BANK, MAIN OFFICE, TORONTO
(M. R. OLANOW)

DOCUMENTATION: TWO SIGNATURE CARDS

TO FOLLOW

LEGAL PAPERS

CHECK BOOK

INITIAL DEPOSITS 11,350

CASH\$

CHECKS\$

CHECK INFO:

on Franklin PTH Bank

COMMENT:

✓ Olanow is residing at the Drake Hotel.
Credit Dept. - Call Toronto Dominion Bank. Olanow
states his account is under the name of "M. R. Olanow".

Olanow is acquiring "Lorinett Capital Corp", a Federal
"check branch" account. He was introduced to Paul Walling, Jr.
by the president of Lorinett Capital.

OPENED BY:

EXHIBIT CC

LEADER

174-2

MEMORANDUM FOR THE RECORD
 FROM: [illegible]
 SUBJECT: [illegible]
 ADLER CITY, N. Y.

DATE	BALANCE
1	
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47	

See restoration of copy
by H. A. Bracht1, next page.

EXHIBIT DD

049

127a

LEDGER

65-63-174-2

UNIVERSITY HOSPITAL

NEW YORK
CITY
NEW YORK
NEW YORK

DEBIT		CREDIT		DATE	BALANCE
1530-		100-		APR 30 64	8,463.24
1,066.50+		10.13		MAY -4 64	6,446.94
11.17-				MAY -7 64	7,513.44
583.34-		6,335.57-		MAY 14 64	7,502.27
287.53+		222		MAY 15 64	583.34
42,000.00-CH		118,000.00-CH		MAY 18 64	878.87
160,000.00+OR				MAY 19 64	158,124.13
				MAY 26 64	870.57

C-101 (copy) 1/10/57 → 1/10/57

2/125/57

SAMUEL OLAN

EE

Personal--Samuel Olan, 16 years of age, of the Deon Road York Mills, was born in Russia and emigrated to Canada. He was born Samuel Lonnie Olanow and educated at Harbord University of Toronto.

Business--He purchased the Company of B. M. Wollstock & Company after serving as business manager and eventually purchasing the company. He obtained ownership of the National Convention, Ltd., wool and stock waste conversion concern. He operated the business until 1952 but because of negligence the business went into bankruptcy in 1953. Montreal Exchange sold-out because of business failure. He sold to Peter Crosby III.

Credit Standing--It is difficult to determine his exact net worth. Sources indicate it to be not more than \$25M. He is considered a shrewd and cunning businessman, drives expensive cars, takes trips to Florida, and owns expensive apartment house. Maintains only nominal cash balances in banks. He underestimates himself in stock and always short of cash.

Law Record--He has had many suits filed against him and has been connected with smuggling of cigarettes into Canada from U. S. He was charged with theft of \$190M from Brunston Mining Corp. but released on bond.

Conducts personal affairs under the name of B & J Holdings. Two local banks have encountered considerable difficulties and would not care to deal with subject under any circumstances.

2/125/57
Bert H. Hocking

EXHIBIT EE

051

FF

LONNIE OLANOW A/K/A
M. R. OLANOW
DOMINION BANK
TORONTO

May 20, 1964

Toronto Dominion Bank, Toronto, Mr. Blumstead, Enquire 6-9441:
"Subject is known to me for many years as Max Olan. I think he has a residence in Florida and he is in stock promotion business. He is known to be a smooth operator and type of person who operates by his wits. I don't know of any account which is styled M.R. Olanow. I know our bank not only would refuse to make him a loan, but would not even open an account for him. If we did make him a loan, we would have a problem collecting. Mr. Olanow is the type of person who would look you in the eye and say I have an account, while there is no such thing. When he comes over there to open an account with you, just shake his hand good-bye and don't bother with him."

P. Sarfeh:sg

July 17, 1964

Mr. Mastronardo received a call from Drake Hotel that Mr. Olanow presented them a check for \$1,000 drawn on National Trust Co. 21 King Street, E. Toronto, Canada, which was subsequently returned, unpaid, stamped "signature illegible, cannot trace."

ant

By: P. Sarfeh

July 28, 1964

Chase Manhattan Bank, Mr. Picore, LL 2-4840:
Mr. Picore called on behalf of a valued customer regarding Mr. M.L. Olanow and Collier Trading Corp., 41 Wall Street, New York. No amount was mentioned in the inquiry, Chase's customer looking mainly for a character reference on Mr. Olanow. Mr. Picore said they could find no agency reports on Mr. Olanow. I mentioned that possibly they could check under the name of Samuel Olan. Mr. Mastronardo suggested that all dealings with Olanow be on a well defined and fully scoured basis and Mr. Picore was informed of this.

REA:Ant

By: *[Signature]*

EXHIBIT FF

052

*We were asked to list the
 certificates for the
 stock. They were already listed
 by the company on May 20 in the
 book of the company
 at the company office.*

RECEIVED THE FOLLOWING STOCK CERTIFICATES OF

ROOSEVELT CAR CORPORATION

<u>Number</u>	<u>Amount of Shares</u>	<u>Name of Corporation</u>
1	1,000	Jules Backman
2	1,000	Isidore Bergner
3	666 7/10	Paul Black
4	666 6/10	Walter Black & Jerry B. Black
5	750	Marcel Deschamps
6	750	Sidney Deschamps
7	500	Alexander Eltman
8	500	S. Delvalle Goldsmit
9	500	Aaron Gross
10	500	Israel Kalish
11	500	Martin Gainsbrugh
12	1,000	Martain Kane
13	500	Howard Katz
15	1,000	Samuel J. Levy
16	500	William Modell
18	500	Hyman Rubinroit
19	1,000	Aaron M. Scharf
20	500	Victor M. Schneider
21	1,000	Charles Shapiro
22	1,000	Sidney Tolmage

*For
 [Signature]*

EXHIBIT GG

053

131a

H 17

*PJ 4/29/64
3/24/65 - MB*

May 26, 1964

Mr. Sidney Tolmage
20 Vesey Street
New York 7, New York

Dear Mr. Tolmage:

We acknowledge receipt of your letter dated May 20,
enclosing two stock certificates of Roosevelt Capital Corp.

We delivered these certificates to Mr. Samuel Stone,
150 Broadway, New York City, against receipt as evidenced
by the attached photostat.

With kindest regards.

Sincerely,

P.J. Mastronardo
Assistant Cashier

PJM:sg
Encl.

EXHIBIT III
054

132a

LAW OFFICES
TOLMAGE AND HARRIS
20 VESEY STREET
NEW YORK 7, N.Y.

JEANNETTE M. HARRIS
SIDNEY TOLMAGE
ALAN D. WOLFER
IRVING WAXMAN

WORTH 4-1390
AREA CODE 212
CABLE: TOLMARLEX, N.Y.
ISIDORE BERONER
COUNSEL

May 20, 1964

Registered Mail
Return Receipt

Mr. Patrick J. Mastronardo
Assistant Cashier
Franklin National Bank
8 Hanover Square
New York, New York

Re: Roosevelt Capital Corp.

Dear Sir:

Pursuant to my letter to you dated May 14, 1964,
wherein I stated that there was still 1166.7 shares of stock of Roosevelt
Capital Corp. due you, I am herewith enclosing the following:

1. Certificate #14 for 500 shares of Roosevelt
Capital Corp., endorsed by Ira Katz;
2. Certificate #17 for 636-7/10 shares of
Roosevelt Capital Corp., endorsed by Ben Okun.

I do not owe you any further stock.

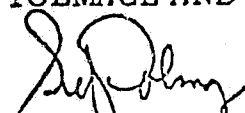
Would you be kind enough to acknowledge receipt of
this letter and the enclosures.

In accord with foregoing.
Received above shares.

Samuel Stone
ST:EK May 26, 1964
Enclosures

Very truly yours,

TOLMAGE AND HARRIS


Sidney Tolmage

133a

II

DEBIT

ACCOUNT	DESCRIPTION	DATE	AMOUNT
Reverend Capital Corp.	To close yr. off ck chge 7531415	5/15/64	118 600 -
	7531416		42 600 -
Official Checks not charged to this a/c 5/15/64 This will adjust.			
APPROVED BY	TOTAL		160000 -

55/17 MAY 63

DO NOT WRITE IN AREA BELOW


0016000000

EXHIBIT II

056

134a

✓✓

ACCOUNT NO.		<input checked="" type="checkbox"/> REGULAR CHECKING <input type="checkbox"/> SPECIAL CHECKING		REQUESTED BY <input checked="" type="checkbox"/> HAWEN <input type="checkbox"/> HAYCE		DO NOT DESTROY CERTIFIED FRONT COPY OF ORIGINAL CHECK NOT REENTRANTLY RECORDED	
01/01/03/0				CHECK NO.		3700000000	
MAKER ROOSEVELT CAPITAL CORP.		PAYABLE TO ROOSEVELT CAPITAL CORP.		DATE 1/16/03		FRANKLIN NATIONAL BANK	
 FRANKLIN NATIONAL BANK IN ACCORDANCE WITH BANKING REGULATIONS THE CHECK COVERED BY THIS VOUCHER WILL BE RETAINED BY US. SHOULD YOU REQUIRE THE CHECK PLEASE PRESENT THIS VOUCHER BEARING AN AUTHORIZED SIGNATURE ON FILE IN OUR BANK.		RECEIVED BY		DATE 1/16/03		2 000000	
DEBIT		AUTHORIZED SIGNATURE					

000067000000

EXHIBIT JJ

135a

EXHIBIT KK

LL

LONNIE CLANOW
30 BROAD STREET
NEW YORK, N.Y.

P.J. Mastronardo At the May 13 reception for the opening of the Hanover Square Office, Bill Wallace, Vice President of our Roosevelt Field Office, introduced me to Lonnie Clanow. He represented himself as a prospective customer and owner of the El Morocco Restaurant. Wallace had learned that Clanow was about to purchase Roosevelt Capital Corp., an SBIC, which maintained an account at Roosevelt Field. Clanow claimed to be a Franklin booster and expressed the desire to one of our conference rooms on the following morning in order to close on the purchase of the SBIC. He indicated that he would open several accounts with us at that time.

The closing took place on the morning of May 14, at which time Clanow introduced his associate, Ray Pierson, who had arrived from California. Among the assets of the acquired SBIC were \$187K in matured Treasury bills which was credited to its account. Other Corporate accounts were opened with us through a series of inter-company transfers representing loan transactions. While Clanow does not appear as an officer of any of the corporate accounts established with us, he obviously is the man who makes the decisions in financial matters.

Clanow very subtly led me to believe that he was well-known to Bill Wallace, which I subsequently learned was not true; however, a credit investigation of both he and Pierson was undertaken. Both of these men provided bank references upon request. Clanow indicated that his bank account was maintained in Toronto under the name of M. R. Clanow. Our credit investigation revealed very unfavorable information about Clanow and therefore both he and Pierson were told to make other banking arrangements.

EXHIBIT LL

059

137a

**Defendant's Response to Request for Admission of
Genuineness of Documents Under Rule 36**

138a

139a

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.

RESPONSE TO
REQUEST FOR
ADMISSION OF
GENUINENESS
OF DOCUMENTS
UNDER RULE 36,
F.R.Civ.P.

Civil Action
No. 67 C 439

Without admitting to or acknowledging the accuracy of the Government's "description" of the documents, defendant admits the genuineness of the copies of the documents attached to the Government's request, except as follows:

Attachment Letter

T

Response

Defendant lacks sufficient knowledge or information to admit or deny the genuineness of the document and states that it has made reasonable inquiry and that the information known or readily obtainable by it is insufficient to enable it to admit or deny.

140a

KK

Denies because there is no document designated "KK" attached to defendant's copy of the Government's request.

Dated: New York, New York
December 4, 1972

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
Attorneys for Defendant

By

Julius Berman
A Member of the Firm

BEST COPY AVAILABLE

141a

**Affidavit of J. K. Aynesworth, Financial Analyst,
Commercial, Office of Loan Administration,
U. S. Small Business Administration, Sworn
to May 10, 1973**

142a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of the
funds, assets and property of
ROOSEVELT CAPITAL CORPORATION,

Civil Action
No. 67 C 439

Plaintiffs,

- against -

FRANKLIN NATIONAL BANK,

Defendant.
----- x

A F F I D A V I T

DISTRICT OF COLUMBIA SS:

J. K. Aynesworth, being duly sworn, deposes and says:

1. I am a Financial Analyst, Commercial, Office of Loan Administration, Small Business Administration, an agency of the Executive Branch of the Government of the United States, with an office at 1441 L St., N. W., Washington, D. C. 20416. I make this affidavit at the request of ROBERT A. MORSE, United States Attorney for the Eastern District of New York.

2. As Financial Analyst, Commercial, I have examined the records of the Small Business Administration, and have ascertained from those records the following facts concerning Roosevelt Capital Corporation.

3. In January 1962, Roosevelt Capital Corporation, by Charles Shapiro, Arthur V. Briskin and Alexander Eltman, filed with the Small Business Administration a Proposal to Operate a Small Business Investment Company. (Copy attached hereto as Exhibit A)

4. The Small Business Administration determined that Roosevelt Capital Corporation qualified as a small business investment company pursuant to Title 15, United States Code, Section 681, et seq. and, in February 1962, the Small Business Administration loaned to Roosevelt Capital Corporation

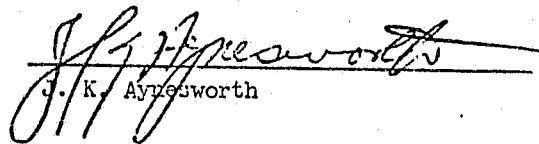
the sum of \$150,000, as evidenced by a twenty year debenture for that sum dated February 8, 1962. (Copy attached hereto as Exhibit B)

5. The aforesaid Government loan to Roosevelt Capital Corporation became due and payable in May 1964, prior to maturity, upon the breach of certain terms and conditions of the debenture, and demand was made for the principal and interest then owing.

6. Thereafter, the indebtedness remaining unpaid, the UNITED STATES sued Roosevelt Capital Corporation on the indebtedness in an action in the United States District Court for the Southern District of New York, Civil Action No. 65 Civ. 162, and obtained a judgment in the amount of \$157,229.17 plus interest. (Copy attached hereto as Exhibit C)

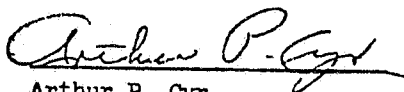
7. No amount has been paid against said judgment. Interest in the amount of \$66,800.14 has accrued through March 9, 1973. Total indebtedness owing the UNITED STATES pursuant to the judgment against Roosevelt Capital Corporation as of March 9, 1973, is \$235,487.37, with interest accruing at the daily rate of \$28.114538, as set forth in the Certified Statement of Account attached hereto as Exhibit D.

Dated May 10, 1973


J. K. Ayresworth

Sworn to before me this

10th day of May, 1973.



Arthur P. Cyr
Notary Public

My Commission Expires 8-15-75



SMALL BUSINESS ADMINISTRATION 145a

JAN 10 1962

PROPOSAL TO OPERATE
A SMALL BUSINESS INVESTMENT COMPANY
UNDER
THE SMALL BUSINESS INVESTMENT ACT OF 1958, AS AMENDED

Date: January 3, 1962

See Instructions on Page 2

Item 1. Name of Proposed Operator (Exact name as specified in proposed Articles of Incorporation)

~~ROOSEVELT CAPITAL CORP. (by certificate of amendment)~~

Item 2. Proposed Location of Principal Office (To extent known)

City and Zone Garden City County Nassau

Street and Number 600 Old Country Road State New York

Item 3. Agent for Correspondence

Full Name ALEXANDER EITMAN

Street and Number 600 Old Country Road

City and Zone Garden City, N. Y. Telephone Pioneer 1 - 6262

State New York

Item 4. Proposed Capitalization at Start of Business

(a) Capital Stock:

COMMON Class \$ 10.00 Par Value Per Share

Authorized 6,500 Shares

Outstanding 6,500 Shares

Sales Price Per Share \$ 10.00 (Cash)

Resultant Cash Proceeds as Paid-in Capital and Surplus. \$ 65,000.00

If more than one class of Capital Stock:

PREFERRED Class \$ 100.00 Par Value Per Share

Authorized 1,000 Shares

Outstanding 900 Shares

Sales Price Per Share \$ 100.00 (Cash)

Resultant Cash Proceeds as Paid-in Capital and Surplus. \$ 90,000.00

Total Paid-in Capital and Surplus from Sale of Stock \$ 155,000.00

(b) Subordinated Debentures Proposed to be Sold to SBA \$ 150,000.00

Total Paid-in Capital and Surplus as Proposed,
Including Subordinated Debentures \$ 305,000.00

Less Total Organization Expenses, Incurred and Proposed \$ 5,000.00

Net Paid-in Capital and Surplus, Including Subordinated
Debentures \$ 300,000.00

(c) Other Outstanding Debt Securities (If any)

EXHIBIT A

065

146a
PART I
INSTRUCTIONS

(References in parentheses are to Act, Amendments, Regulations in force as of date of this form and are for guidance only. This Proposal, refer to and read with care the applicable Act, Amendments, and Regulations thereunder.)

General:

Proposal Form 414 is to be used by Proponents for submission to the Small Business Administration for consideration for qualification to submit a License Application.

It is suggested that Proponents not incorporate the Proposed Operator until drafts of the proposed Articles of Incorporation and bylaws have been submitted as exhibits to Form 414 and have been approved by the Small Business Administration and a "Notice to Proceed" has been issued to Proponents.

The initials "SBA" and the words "Proposed Operator" and the "Act" where used throughout this Proposal shall be as defined in section 107.103-1 of the Regulations.

Format, etc.:

This SBA Form 414 and the exhibits required hereunder (unless such exhibits are excepted by specific instructions) must be completed and submitted in quintuplicate to the SBA Regional Office nearest to the principal office of the Proposed Operator. Exhibits should be typed on a good quality bond paper for the original and on a good grade manifold paper for the copies, both of legal size. Each sheet of such exhibits must be identified at the top by a number reference to the related Item, the caption designated for such Item, and the name of the Proposed Operator. Separate sheets must be used for each exhibit and, where more than one sheet may be necessary for an exhibit, such sheets must be securely fastened together at the top edge. In responding to Items, either include the text of the Items or make complete statements which indicate to the reader coverage of the Items without the necessity of his referring to the text or the instructions thereto; do not include answers such as "yes," "no," or "inapplicable."

Disposition and Action:

Upon completion of its review, investigations, and evaluations of this Proposal, SBA may call upon the Proponents to furnish additional information and substantiations considered to be in the interest of the Proposal and of SBA's evaluation. As soon as action has been taken on the Proposal, the Proponents will be notified and, if the Proposal is approved, will be furnished with a Notice to Proceed and a License Application, SBA Form 415, which will specify the terms and conditions under which a License will be issued. (See sections 107.201-2, 107.201-3, 107.201-4, 107.201-5 of the Regulations.)

Other Government Agencies:

SBA is without authority to interpret, rule or advise with respect to any laws or regulations administered by the Securities and Exchange Commission (SEC), Internal Revenue Service or any other Federal, State, or local government agency and with respect to the Proponents' or Proposed Operator's responsibilities thereunder. Any opinions or rulings of such agencies with respect to such responsibilities of the Proponents or Proposed Operator will be duly considered by SBA in its determinations.

SEC Review:

The Proposed Operator must, prior to the issuance of a license by SBA, submit evidence from the Securities and Exchange Commission that the Proposed Operator is not required to register as an investment company under the Investment Company Act of 1940 and that the sale of its securities as presently proposed is not subject to registration under the Securities Act of 1933, or if registration is required under said Acts, evidence satisfactory to SBA that the Proposed Operator has complied with such requirements. A copy of this Proposal will be furnished by SBA to the SEC for concurrent review. Proponents should write to the SEC for a determination of the status of the Proposed Operator under those Acts.

Amendments:

It is specifically called to the attention of the Proposed Operator that this Proposal, when it is approved initially by SBA, will become a part of the License Application and amendments thereto will require approval of SBA. (See section 107.308-7 of the Regulations.) Amendments should be submitted in all cases in quintuplicate as entire replacing pages, Items or exhibits, in the same form and size as the original Proposal and to the SBA Regional Office nearest to the principal office of the Proposed Operator. Each original amended page so submitted should be authenticated by the date and signature of an authorized officer or Counsel for the Proposed Operator or Licensee, and copies shall bear the date and signature of the same person.

ITEM 5

SOURCES OF INITIAL CAPITAL

AND EXPANSION PLANS

(a) INITIAL CAPITAL

(1) Commitment has been received for capital stock subscription of 6,500 shares of common stock, to be purchased at \$10.00 per share and 900 shares of preferred \$100.00 par value shares. The funds for such securities are available and will be deposited or placed in escrow, pursuant to the regulations, upon receipt of a "Notice to Proceed."

No offering of securities will be made to the general public.

The common stock will be purchased by and issued to Alexander Eltman, Arthur V. Briskin and Charles Shapiro in equal amounts, to wit: 1,833-1/3 shares each.

The preferred stock is intended to be offered to no more than eight persons, each of whom is a friend of either Mr. Eltman, Mr. Briskin or Mr. Shapiro.

Such purchasers of preferred stock will take the said securities for investment and not for resale to others.

Said securities will be offered by personal contact. No paid salesmen or solicitors will be employed or utilized nor will use be made of printed sales literature, newspaper or other forms of advertising or any other form of advertising medium.

(2) At the completion of its initial offering, the Proposed Operator will have three (3) common stockholders and approximately eight (8) preferred stockholders.

It is not intended that a corporation is to beneficially own 10% or more of the voting securities of the Proposed Operator. It can be definitely stated that no corporation will own any of the voting securities of the Proposed Operator.

(3) It is not intended to register any of the securities under the Securities Act of 1933 for the reason that the offering of the securities of the Proposed Operator is deemed a private offering and therefore exempt from registration. The persons to whom the preferred stock of the Proposed Operator is to be offered are all personal friends of three of the proposed principal officers of the Proposed Operator and none will be offered to the general public.

(4) The Proposed Operator will not register under the Investment Company Act of 1940. Exemption from registration is claimed for the reason that the number of persons to whom the securities of the Proposed Operator will be offered is less than 100.

(b) ADDITIONAL CAPITAL

1. During the first year of its operation, the Proposed Operator will probably not raise additional capital other than to sell debt securities under Section 302 and make borrowings under Section 303 of the Act.

148a

2. During the second or subsequent years of operation, in the event the available funds of the corporation are committed, it is planned to raise additional capital through the sale of stock to the then existing stockholders or to others, such as relatives, friends and associates of the then existing stockholders. Another source of funds will be borrowings from S. B. A., to the extent permitted by law.

ITEM 6STATUS OF ORGANIZATION

(a) The Proposed Operator has not yet been incorporated. When incorporation is accomplished, New York State will be the State of incorporation.

(b) Annexed hereto is an opinion of Alexander Eltman, counsel for the Proponents that the Proposed Operator is, or can be, chartered under New York State law to conduct, in the State of New York, the activities described under Title III of the Act, in accordance with and subject to the provisions and purpose of the Act and subject to Regulations prescribed by S B A under the Act.

(c) Annexed hereto are the proposed Articles of Incorporation, showing the names of the incorporators and the proposed by-laws of the Proposed Operator.

150a

February 21, 1961

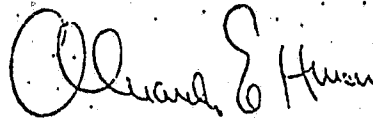
Small Business Administration
Washington, D.C.

Gentlemen:

I am counsel to, as well as one of the
Proponents of the Proposed Operator, Meadow-
brook Capital Corp.

It is my opinion that the Proposed Oper-
ator can be chartered under the laws of the
State of New York to conduct, within the State
of New York, the activities described under
Title III of the Small Business Investment Act,
in accordance with and subject to the provisions
and purposes of the Act and subject to Regula-
tions prescribed by the Small Business Adminis-
trations under the Act.

Very truly yours,



Alexander Eltman

02 0108

ITEM 7AREA OF OPERATIONS(a) DEFINITION OF AREA

The area in which the business of the Proposed Operator will be principally carried on is the State of New York, without limitation, however, as to the residence, domicile or place of business of parties with which it will transact its business or otherwise deal in accordance with regulations issued by S.B.A.

It is not intended that any branch offices or agencies will be established within 60 days following the receipt of a license.

(b) AUTHORIZATION IN OTHER STATES

Since the area defined in paragraph (a) above does not include one or more States in addition to the proposed State of incorporation, no opinion of Counsel is being furnished with respect to the ability of the Proposed Operator to obtain authority to conduct its business in any State other than New York.

NEED FOR PROPOSED OPERATOR
IN THE AREA

The major complaint of most "small businesses" in the Metropolitan Area of New York (including the vast complex of Long Island) is that, even though they have a quality product or service to offer and are directed by able and progressive management, their rate of growth has been hampered by lack of adequate working capital.

In today's tight money market, such needed capital is not available from lending institutions or private investors. Where it is available, only short-term situations are sought.

The Proponents hope to be able to fill that gap through the operation of a Small Business Investment Company.

Although the area of operations as set forth in Item 7 is defined as the State of New York, emphasis will be placed on activities in the Long Island section of the Metropolitan New York area.

Few areas in the United States have grown as rapidly during the past two decades as has the Long Island area. Many new businesses in varied fields of endeavor have been established or removed to Long Island. Collaterally, home building has been more intense than in any other area in the country.

These businesses are in need of additional funds, either through equity financing or long term loans in order to avail themselves of the many opportunities for expansion confronting them. In addition, many builders of residential and industrial structures are in need of funds to keep pace with the expanded program in Long Island.

MR. SHAPIRO, one of the Proponents, has had a vast and intensive experience in the real estate and general business field. He is well acquainted with the needs of small businesses, particularly in the real estate field, not only in Long Island but throughout the Metropolitan area. It is his considered judgment that the availability of funds from a Small Business Investment Company such as is proposed here would be of material aid and assistance.

MR. ELTMAN, who is a practising Attorney is counsel for the Wood Kitchen Cabinet Institute Inc., and has had a varied experience in general business matters and in many activities allied with the building industry. He shares Mr. Shapiro's views because his experience in dealing with numerous small business organizations in this area is that so many of them could progress much further if these needed funds were readily available.

MR. BRISKIN, the other Proponent is, noted for his experience in the advertising and public relations field. Because he handles advertising problems for small business concerns, he is aware of the need for additional funds among such enterprises in order that they may properly merchandise and promote their products and services.

ITEM 9PLAN OF OPERATION

The general plan of operation for the Proponent is as follows:

(a) It is proposed that the following will be the officers of the Corporation.

President	- Charles Shapiro
Vice-President	- Arthur V. Briskin
Secretary-Treasurer	- Alexander Eltman

Messrs. Shapiro and Eltman will be in charge of the functions of the Company and share the management responsibilities thereof jointly. Mr. Briskin will assist in such functions.

It is not intended at the outset that any fixed rate, weekly or annual compensation, will be paid to any of these three officers but that, until experience demonstrates the amount of time actually required to be spent by them in the management of the Company, they will be compensated at the rate of \$50.00 a day for each day necessarily spent in the Company's activities.

It is estimated, predicated upon the foreseeable needs of the Proponent that Messrs. Shapiro and Eltman will each spend a total of two full working days on behalf of the Corporation and that Mr. Briskin will spend two full working days a month thereto. Thus, the estimated annual amount of compensation to be paid Messrs. Shapiro and Eltman will be \$5,000.00 each and Mr. Briskin, \$1,200.00.

To assist them in their functions and for the purpose of carrying on the day to day activities of the Company, it is intended that there be hired a General Manager who will be a person experienced in the finance field and whose functions it will be to initially screen inquiries for financing or loans. He will, in addition, make such inspections of the physical facilities of applicants and make such other investigations as may be necessary to enable the Executive Officers and the Board of Directors of the Operator to properly evaluate the worth of applications submitted to the Operator for assistance. It is expected that such a person will be paid a salary in the neighborhood of \$8,500.00 per year.

Secretarial and clerical assistance will be furnished on a part time basis through the secretarial facilities of both Messrs. Shapiro and Eltman. This procedure will be initially utilized to conserve operating funds and when the need for full time clerical and secretarial assistance is required, full time personnel for these functions will be employed. It is estimated that for the first six months of the Proposed Operator's activities, clerical and stenographic services will entail the expenditure of approximately \$1,500.00, and that after the six month period, this sum may rise to approximately \$4,000.00 per year. It is

Alexander Eltman
2/18/61

anticipated that in the second year of operations, such services will entail the expenditure of \$3,000.00 per year.

No employment contracts have been entered into with anyone, nor is it intended, presently, that any such contracts will be entered into. As the experience of the Proposed Operator develops, it may be necessary, in order to attract competent personnel, to enter into such employment contracts.

(b) Messrs. Shapiro and Eltman share an attractive well appointed suite of offices at 600 Old Country Road, Garden City, Long Island, and it is intended that the Offices of the Proposed Operator will be maintained in this suite. This building which is known as the Franklin National Bank Building, is strategically located, of modern design, and is considered one of the "prestige" office buildings in Long Island. It is expected that a rental of \$200.00 a month will be charged to the Proposed Operator for the use of these quarters which rental is much less than would be required to be paid if the Proposed Operator were to establish its own quarters. The purpose of this arrangement is to economize, initially, on operating expenses until such time as the needs of the Proposed Operator warrant quarters of its own.

The suite is approximately 1,000 square feet and the building rental for comparable space is \$6.50 per foot. No specific space in the suite will be allocated to the Proposed Operator. Rather, the entire space will be considered the offices of the Proposed Operator and the name of the Proposed Operator will be prominently listed on the entrance door thereof.

(c) It is intended to utilize consulting and advisory services of appraisers, management consultants and similar experts where needed to properly evaluate applications for financing or loans.

It is intended that where the Proposed Operator is required to provide consulting and advisory services, such service will be billed on a per diem basis. These services will be rendered when requested by the Operator and will not be a condition to the granting of a loan.

The fees to be charged will be competitive and will be predicated upon the background, training and experience of the consultant selected. The Proposed Operator agrees to submit a schedule within two years after receipt of license, itemizing the consulting and advisory fees intended to be charged.

(d) Where necessary, investment advisers, finders, consultants or business managers will be requested to present situation for consideration.

It is not intended presently that such persons will be utilized on a continuing basis but if the business of the Proposed Operator requires that they be utilized on a continuing basis, such services shall be performed under the provisions of a contract in writing which contract shall specifically:

- (1) Describe the services to be performed.
- (2) Describe the business to be paid thereunder.

CC-Eltman Co. 12/8/61

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- (3) State the duration of such contract.
- (4) Provide for the termination of the contract by the Proposed Operator, without penalty, on not more than 60 days written notice.
- (5) Provide for the automatic termination of the contract in the event of its assignment by the person performing the service.
- (6) Provide for the full disclosure of all interested parties whenever the person performing such service performs services for small business concerns doing business with the licensee.
- (7) Be approved by a vote of a majority of the outstanding voting securities of the Proposed Operator prior to such contract becoming effective.
- (8) Be approved annually by a vote of a majority of the outstanding voting securities of the Proposed Operator or by the vote of a majority of its Board of Directors, including the approval vote of a majority of those members of the Board of Directors who are not parties to or did not have a pecuniary interest, direct or indirect, in such contract.

At the outset, as indicated, it is intended that investment advisers, finders, consultants or business managers, will be utilized on a "per case basis". Fees for such services will be on a per diem basis at competitive rates. Where such service involves the presentation of situations for consideration, the individuals will be paid a "finder's fee" not exceeding 10% of the interest charges.

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PROPOSED AGREEMENT RELATIVE TO OFFICE SPACE
FOR PROPOSED OPERATOR

Meadowbrook Capital Corp.
600 Old Country Road
Garden City, New York

Gentlemen:

We agree to allocate to you unspecified space in Suite 210 of 600 Old Country Road, Garden City, New York, for use as your offices at a rental of \$200.00 per month, so that this suite may be considered the offices of your Corporation.

It is agreed, further, that this arrangement may be terminated upon thirty days' notice by either of us.

Very truly yours,

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PROPOSED CONTRACT TO BE ENTERED
INTO BETWEEN PROPONENT AND
MESSRS. SHAPIRO AND ELTMAN

Messrs. Alexander Eltman and
Charles Shapiro
600 Old Country Road
Garden City, New York

Gentlemen:

This will confirm our understanding with respect to the management of Meadowbrook Capital Corporation. We agree to pay you the sum of two hundred (\$200.00) dollars per month as rental for the use of premises occupied by you which is to be utilized as the office of this Corporation. It is understood that the name of the Corporation will be placed on the bulletin board of the building and on the entrance door to the suite of offices occupied by you and that your premises are to be deemed the offices of the Corporation.

Both of you are to be in charge of the functions of the Corporation and, subject to the direction and approval of the Board of Directors, share the management responsibilities thereof jointly.

You are to have no fixed salary as President or Vice-President of the Corporation respectively, but we agree to pay each of you the sum of fifty (\$50.00) dollars a day for each day necessarily spent in the Corporation's activities.

Subject to the approval of the Board of Directors, you are to engage a General Manager who is to be a person experienced in the finance field and whose functions it shall be to initially screen inquiries for financing or loans. This General Manager is to report directly to you.

You are requested to furnish such secretarial facilities as may be required in the functions of the Corporation and we agree to pay for actual expenses incurred. It is understood that no expenses other than those specified herein shall be incurred by you without specific authority and approval of the Board of Directors except that there shall be made available to you an impress account for minor disbursements totalling in the aggregate no more than two hundred fifty (\$250.00) dollars per month.

02 9108

- 2 - 158a

This agreement shall remain in force and effect for a period of one year from the date hereof at which time it shall be reviewed for modifications, if necessary.

Please indicate your acceptance of the terms of this agreement by affixing your signatures to the foot herein.

Very truly yours,

MEADOWBROOK CAPITAL CORP.

By _____

Agreed:

02 0108

P O L I C Y(a) INVESTMENT POLICY

(1) It will not be the policy of the Proposed Operator to concentrate its investments in any one industry or particular type of small business concern. Rather, it will be the policy of the Proposed Operator to diversify its activities and investments in industries and small business companies where the policy of the Act can best be pursued. It is felt that such diversification will afford the best protection for invested capital. Investments will be made only in business operations conducted as a regular (not occasional) activity.

The Proposed Operator will not, without prior approval of S B A, provide equity capital or make long term loans to a small business concern if the purpose of such financing is primarily to furnish funds which will be used to repay or free other funds to repay, an obligation of a small business concern to any officer, director or holder of ten (10%) percent or more of the stock of the Licensee, or to any corporation or partnership in which such a person has a significant interest.

(2) The maximum percentage of voting securities of any one small business concern which the Proposed Operator proposes to acquire will necessarily depend upon the relationship and ratio of the amount invested to the net asset value of the investment. The objective of the Proposed Operator in acquiring such securities will not be ordinarily to seek to acquire sufficient voting securities to control such small business concern. However, such controlling interest may be sought when necessary to protect an investment.

(b) INTEREST, DISCOUNT AND OTHER CHARGES ON LOANS

(1) In the State of New York, the maximum rate of interest which may be charged on "loans" is six (6%) percent per annum. However, a corporation may not avail itself of the defence of usury in the event it is required to pay more than six (6%) percent. Effectively, therefore, it may be said that so far as incorporated businesses are concerned, there is no maximum rate of interest or maximum discount rate prescribed by law in the State of New York.

As indicated, however, where loans are made to Unincorporated businesses, no more than six (6%) percent per annum may be charged as interest. However, there may be charged to such a borrower such items of expense as closing costs, investigating and legal fees.

(2) The maximum annual cost to be charged to any borrower in consideration of net funds advanced, for both single payment or installment type loans will not exceed fifteen (15%) percent of average outstanding (unpaid) net funds advanced.

In computing "net funds advanced" for this purpose, charges made by the Proposed Operator against the small business company at the time of granting the loan for investigations, screenings, audit reports, appraisals,

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financial reports, legal services, commissions, etc. will be added to any discount from the face amount and will correspondingly reduce "net funds advanced." In computing the annual cost of "net funds advanced" as so reduced, the annual amount paid by way of interest and discount (increased as previously stated) will be the costs taken into consideration.

(c) INTERNAL CONTROLS OF FUNDS AND PORTFOLIO SECURITIES

It is intended that the following procedures will apply with respect to the custody of securities and approval of disbursements of cash and withdrawal of securities from safekeeping:-

(1) As to the custody of securities:-

- (a) Securities will be kept in a safe deposit vault maintained by a member bank of the Federal Reserve System. Access to such vault will be delegated only to the executive officers of the Proposed Operator and the presence of two (2) of such officers will be required for the removal of such securities.

The names of such executive officers are contained in reply to Item II hereof.

(2) Approval of disbursements and withdrawals.

- (a) Two out of three of the executive officers will be required to sign all checks of the Proposed Operator and, as indicated, all authorizations for the withdrawal of securities from safekeeping.
- (b) Two out of three of the executive officers will be required to approve disbursements and withdrawal of securities from safekeeping.

C. G. Lewis, Jr.
12/18/61

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Subject: Fidelity Bond

1. Number: 9605959
2. Name of Surety: Federal Insurance Company into which has been merged (July 1953) United States Guarantee Company, NY, NY
3. Issued to: Meadowbrook Capital Corp.
4. Amount: \$25,000.00
5. Riders attached:
 - (a) Endorsement, No. 1

02-0108

ITEM 11MANAGEMENT AND CONTROL(a) RELATIONSHIP

(1)

NAME

Charles Shapiro
600 Old Country Road
Garden City, New York

President
and
Director ✓

2,166-2/3 shares of
common stock repre-
senting 33-1/3% of
the outstanding
common stock.

Arthur V. Briskin
114 New York Avenue
Freeport, New York

Vice-President
and
Director ✓

2,166-2/3 shares of
common stock repre-
senting 33-1/3% of
the outstanding
common stock.

Alexander Eltman
600 Old Country Road
Garden City, New York

Secretary-
Treasurer
and
Director ✓

2,166-2/3 shares of
common stock repre-
senting 33-1/3% of
the outstanding
common stock.

(2)

(Same as above. It is not intended
that a Corporation is to beneficially
own any of the voting securities of
the Proposed Operator.)

(b) ARRANGEMENTS AFFECTING CONTROL

With respect to each of the persons named in response to
(a) above and as to all capital stock owned or to be owned by
each, as stated above, the following is declared:

- (1) None of such shares is to be owned indirectly
by other persons.
- (2) None of such shares, either of record or bene-
ficially is to be transferred or resold to
others.
- (3) None of such shares is now subject or is to
be made subject to any loan or pledge inci-
dent to the purchase thereof.
- (4) None of such shares is or to be subject to
any understanding or commitment as to exer-
cise of voting rights.

Alexander Eltman
12/1/41

(c) QUALIFICATIONS OF MANAGEMENT

1. Annexed hereto are separate sheets showing, with respect to each present or proposed officer, information concerning their qualifications.

2. Charles Shapiro is the sole owner of Charles Shapiro Associates.

Arthur Briskin is the sole owner of all of the stock of Draco Advertising Agency, Inc. and owns more than 10% of the stock of Kenneth Rader Advertising Agency, Inc.

Alexander Eltman does not own 10% or more of the stock of any corporation.

2

Office

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ARTHUR V. DRISKIN

Office - 18 West 56th Street
New York, New York

From 1949 to 1951, Mr. Driskin was a professor on the staff of University of North Carolina and head of its Department of Radio and TV.

Mr. Briskin's specialty has been the creation and production of advertising programs, publicity and public relations for consumer and trade products. He has been a merchandising consultant and marketing specialist.

His background in the advertising and public relations field will enable him to advise the Proponent as to whether applicants for equity financing and loans have potentials for growth as a result of the services the Proponent, as a licensee, can offer.

Office - 600 Old Country Road
Garden City
Long Island, New York

Until 1954 (from 1941) Mr. Eltman was associated with Henry Mayer in the practise of the law. In 1954, he opened his own offices for the practise of the law at the Empire State Building and in January, 1961 opened offices at 600 Old Country Road, Garden City, New York. (He shares the suite with Mr. Shapiro, one of the other Proponents.)

He has been instrumental in arranging needed financing for his clients and others and is familiar with the procedures for their procurement.

Mr. Eltman's legal experiences and specialized activities in industrial relations and commercial financing will be of assistance to the Proposed Operator in passing upon applications for equity financing and loans.

ITEM 12PREVIOUS GOVERNMENT FINANCING

(a) None of the persons named in Item 11 (a) has ever received assistance from, requested assistance of, or been refused assistance by, either the Small Business Administration or the Reconstruction Finance Corporation.

(b) No company controlling any of the persons named in Item 11 (a) has ever received assistance from, requested assistance of, or been refused assistance by, either the Small Business Administration or the Reconstruction Finance Corporation.

(c) No company directly or indirectly controlled by any of the persons named in Item 11 (a) individually or in concert with others, has ever received assistance from, requested assistance of or been refused assistance by either the Small Business Administration or the Reconstruction Finance Corporation.

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ITEM 13

SMALL BUSINESS INVESTMENT
COMPANY AFFILIATIONS

None of the persons named in item 11 (a) presently have or contemplate direct or indirect ownership of stock in any other small business investment company or have affiliations therewith.

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ITEM 14

DISCLOSURE OF ANY FAMILY
RELATIONSHIP OR FINANCIAL INTEREST
OF ANY S.B.A. EMPLOYEE

Q The Proponents, to the best of their knowledge, information and belief, are not related by blood, marriage or adoption to any S.B.A. employees or advisory board members nor do any S.B.A. employees or advisory board members presently have, nor in the past have they had any, direct or indirect, financial interest in or association with any of the Proponents.

ITEM 15NAMES OF ATTORNEYS, ACCOUNTANTS
AND OTHER PARTIES

The only persons engaged by the Proponents in connection with the preparation or presentation of this Proposal are the following:

1. ALEXANDER ELTMAN, an attorney-at-law with offices at 600 Old Country Road, Garden City, New York.

Mr. Eltman's functions are to prepare this Proposal and all incidental documents in connection therewith, prepare and file a Certification of Incorporation, draw up a set of by-laws for the Corporation, attend the first meeting of Incorporators, Directors and Stockholders, advise the Proponents with respect to their obligations under the Small Business Investment Company Act and perform such other functions required to enable the Proposed Operator to begin to function as a Licensee. He is to be paid a fee of \$2,500. for such services.

No special fee arrangements have yet been made for legal services to be rendered beyond that. Such arrangements will depend on the nature of the business operations of the Proposed Operator and the extent of the services to be rendered.

Louis I. Schwartz, a certified public accountant of 152 West 42nd Street, New York City, will serve as the Accountant to the Proposed Operator. He will establish the bookkeeping procedures, make audits of the books and prepare the reports required to be filed. He will be paid a retainer fee of \$250.00 per month.

(b) Arrangements Affecting Control 171a

As to each person, corporation, etc., named in response to (a) above, and as to all capital stock owned or to be owned by each, as stated above, furnish the material and substantive details of all arrangements existing or presently contemplated, whereby:

- (1) Shares owned or to be owned directly are to be owned indirectly by other persons;
- (2) Shares owned or to be owned, either of record or beneficially, are to or may be transferred, or resold, to others;
- (3) Shares are now subject, or are to be made subject to any loan or pledge incident to the purchase thereof;
- (4) Shares are to be subject to any understanding or commitment as to exercise of voting rights.

(c) Qualifications of Management

- (1) Furnish, with respect to each present or proposed officer and director listed under (a) above, a separate sheet showing the following information: Name and address; a summary of business or other vocational experience during the past ten years - stating the periods of each primary activity and the names of the firms, concerns or entities with which associated; title, position and ownership interest in such concerns; basic functions and responsibilities; and a summary of any special experience or qualification pertinent to the Proponents' management responsibilities;

- (2) List all business concerns with which each person listed under Item (a) above is presently affiliated as an officer, director, or by way of direct or indirect ownership of 10% or more of any class of stock of such concerns, by way of direct or indirect control, or by way of any other affiliation, showing names and addresses of such concerns, and details of relationship and ownership.

Item 12. Previous Government Financing

List the assistance received from, requested of, or refused by, either the Small Business Administration or the Reconstruction Finance Corporation, to the extent that any phase of such assistance, request or refusal may have occurred, existed or remained pending during any part of the last five years, as to the following:

- (a) Each person named in Item 11(a),
 - (b) Any company controlling any such person, or
 - (c) Any company directly or indirectly, controlled by any such person, individually or in concert with others.
- State the name of each person, related company, and government agency, and show the original amount, the date and the balance, if any.

Item 13. Small Business Investment Company Affiliations

List persons named in Item 11(a) who have or contemplate direct or indirect ownership of stock in any other small business investment company, or have other affiliations therewith, and show the names of such companies and the per cent of stock ownership involved or such other affiliation.

Item 14. Disclosure of Any Family Relationship or Financial Interest of Any SBA Employee

List the names of any SBA employees or advisory board members who are related by blood, marriage, or adoption to, or who have any present or have had any past, direct or indirect, financial interest in or in association with the Proponents.

Item 15. Names of Attorneys, Accountants, and Other Parties

List the names, addresses, description of services, total compensation to be paid and compensation already paid, of all attorneys, accountants, appraisers, agents, and all other parties (whether individuals, partnerships, associations or corporations) engaged by or on behalf of the Proposed Operator, whether on a salary, retainer, or fee basis and regardless of the amount of compensation, for the purpose of rendering professional or other services of any nature whatever to Proposed Operator or Proponents, in connection with the preparation or presentation of this Proposal.

Item 16. Declaration of Proponents

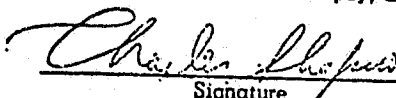
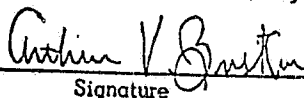
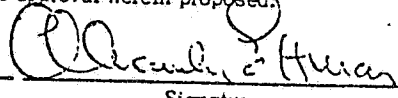
- (a) We, the undersigned proponents, numbering 3 persons, are identified in the Exhibits to Item 11 above as being all the officers and directors of the Proposed Operator, either proposed or duly elected, and all those persons who otherwise own or propose to own, directly or indirectly, 5% or more of the voting stock of the Proposed Operator. We represent that all information submitted in this Proposal and in the Exhibits submitted therewith, or in connection therewith, is true and complete to the best knowledge and belief of each one of us.
- (b) We hereby propose that the Proposed Operator be approved in all respects to operate under the Small Business Investment Act of 1958, as amended, subject to complete compliance by the Proponents and the Proposed Operator with all applicable provisions of said Act, and the pertinent regulations of the Small Business Administration.

(c) Subject to the issuance of a SBA License to the Proposed Operator, we hereby covenant that, prior to or simultaneously with such issuance of a license, we will:

- (1) Furnish the Small Business Administration with evidence satisfactory to it that the capital and surplus to be provided as stated in paragraphs 4(a) and (b) of the Proposal, and represented by cash, will have been duly paid in to the Proposed Operator, and the shares of capital stock will have been duly issued therefor to the persons entitled to receive same, provided however that the Proposed Operator shall be legally entitled to effect such transactions, or
- (2) Enter into such escrow arrangement with such banking institution, as both may be approved by the Small Business Administration, which will effect the same results as provided for in paragraph 4a. above, at the earliest time the Proposed Operator shall become legally entitled to effect such transactions.
- (3) Take all actions necessary to comply with all applicable Federal, State and Municipal laws, and will furnish the Small Business Administration such evidence thereof as it may require.

(d) We, by our signatures below, certify that:

Except as stated in the Exhibit to Item 15 of the Proposal, no one of us has paid or incurred any obligations to pay, directly or indirectly, or has caused the Proposed Operator to so pay or to incur any obligation to so pay, any fee or other compensation for obtaining the approval herein proposed.

		
Signature	Signature	Signature
CHARLES SHAPIRO	ARTHUR V. BRISKIN	ALEXANDER ELMAN
Typed Name	Typed Name	Typed Name
Signature	Signature	Signature
Typed Name	Typed Name	Typed Name
Signature	Signature	Signature
Typed Name	Typed Name	Typed Name
Signature	Signature	Signature
Typed Name	Typed Name	Typed Name
Signature	Signature	Signature
Typed Name	Typed Name	Typed Name

Proponents should immediately notify SBA of any change in or addition to the information set forth above.

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SBA Form 444
(11-62)

02-0108

DEBENTURE

\$ 150,000.00

Date FEBRUARY 8, 1962ROOSEVELT CAPITAL CORP.

Name of Company

Garden CityNew York

City

State

For value received, Roosevelt Capital Corp.

Name of Company

New Yorkcorporation of Garden City

Name of State

City

New York

State

(hereinafter called the "Company"), hereby promises to

pay the Small Business Administration (hereinafter called "SBA") One Hundred FiftyThousand - - - - - Dollars (\$ 150,000.00)

at the office of SBA in Washington, D.C., as follows:

Installments of principal, payable annually, beginning eleven (11) years from the date hereof in amounts as indicated in the following schedule:

<u>Payment</u>	<u>Principal</u>	<u>Payment</u>	<u>Principal</u>
1st	\$5,000	6th	\$12,500
2nd	5,000	7th	12,500
3rd	5,000	8th	12,500
4th	5,000	9th	12,500
5th	5,000	10th	75,000

and the balance of principal, if not sooner paid, shall be paid Twenty
(20) years from the date hereof.

Interest shall be paid by the Company to SBA on the balance of outstanding and unpaid principal, semiannually, beginning six months from the date hereof, at the rate of five percent (5%) per annum, computed from and including the date immediately following the date of each disbursement (date of letter transmitting the check) until all principal shall have been paid.

In addition to the foregoing, whenever the net worth of the company, including capital stock, earned surplus, paid-in surplus, plus the outstanding and unpaid principal amount of this debenture reaches \$1,000,000, SBA may require that an amount equal to fifty percent (50%) of the proceeds of the sale of any stock sold by the company thereafter be paid to SBA and thereupon applied on account of any one or more of the principal installments payable hereunder in the inverse order of their maturities.

A commitment charge shall be paid by the Company to SBA at the rate of one-twelfth of one percent of all or any portion of the principal amount hereof which is not disbursed or reduced by SBA by Regulation or otherwise, for each 30-day period or fraction thereof beginning with the first day after the first thirty days following the date hereof. This commitment charge shall be due and payable by the Company upon billing by SBA. The commitment charge shall not apply to any amount for which disbursement is requested during the initial 30-day period after the date hereof. Thereafter, the commitment charge shall terminate, as to the amount requested to be disbursed, at the end of that 30-day period (following said initial 30-day period) during which the request for such disbursement is made. The date which appears on the SBA form requesting the disbursement shall be deemed to be the date the disbursement is requested. All requests for disbursement shall be for immediate payment by SBA.

This Debenture is issued pursuant and subject to Section 302(c) of the Small Business Investment Act of 1958 and the Regulations under said Act, except that the terms of this Debenture shall prevail over any Regulation inconsistent herewith.

EXHIBIT B

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Upon any dissolution, winding-up, liquidation, or statutory reorganization of the Company, the unpaid indebtedness evidenced by this Debenture shall be subordinate to any other outstanding debenture bonds, promissory notes, or other debt obligations which may be issued by the Company, but shall have priority over any and all classes of stock of the Company.

All or any portion of this Debenture may be prepaid at any time at the option of the Company prior to maturity, without penalty, together with accrued interest.

SBA, by notice in writing to the Company, may declare the disbursed and unpaid principal of this Debenture and accrued interest thereon to be due and payable immediately upon the happening of one or more of the following events:

- (a) the nonperformance or violation, as determined by SBA, by the Company of: any agreement or commitment hereunder; any provisions of the Small Business Investment Act of 1953 or any Regulation thereunder; any authority from or commitment to SBA; any of the provisions of or representations made in or through the Proposal, Form 414; any Notification; the License Application, Form 415; any Request for Disbursement, Form 420; or any amendments to the foregoing;
- (b) default, continuing for a period of 30 days, in the payment of the principal or interest under this Debenture, or commitment charge, as and when the same shall become due and payable;
- (c) on event of default (written notice of which shall be given immediately to SBA) under any other debenture bond, promissory note or obligation which may be issued by the Company.

The indebtedness hereunder shall immediately become due and payable without notice or demand upon the appointment of a receiver or liquidator for the Company or the filing of a petition under any provision of the Bankruptcy Act or other Act for relief of debtors.

From time to time, whenever demanded by SBA, the Company will make, execute and deliver, or cause to be made, executed and delivered, any and all further and other instruments and assurances as may be necessary or proper or requested by SBA to carry out the terms and intent of this Debenture or to provide for the rights and remedies hereunder of SBA.

Company agrees that so long as there is any unpaid balance outstanding under this Debenture, the Company, except with the prior written approval of SBA, will not (i) repurchase or retire all or any part of any class of its capital stock, (ii) make any distribution to its shareholders other than dividends of its own stock or cash dividends as provided below, (iii) increase the salaries or other emoluments of any officer beyond the amounts stated in the Proposal form, or (iv) pay any cash dividends on any class of its stock except out of retained earnings.

Delay by SBA in the exercise or enforcement of any right or remedy hereunder shall not be deemed or construed to be a waiver or relinquishment thereof.

In Witness Whereof the Company has caused this Debenture to be signed by its PRESIDENT and its corporate seal to be hereunto affixed and attested by its Secretary as of the day and year stated above.

Name of Company

By: [Signature]

Title President

(SEAL)

Attest: [Signature]

Secretary

CERTIFICATION

District of Columbia, ss:

I, J. V. Krafnick, being first duly sworn, depose and state that I am a Certifying Officer of the Small Business Administration and duly qualified to make this certification. Further, I aver that this certification is a part of a true and correct copy of an original document received and held by the Small Business Administration in its principal office in the City of Washington, District of Columbia.

Subscribed and sworn to before me, a Notary Public, this 22nd day of January, 1965.

My commission expires 3/31/69.

Notary Public for the District of Columbia

Notary Public for the District of Columbia

Notary Public for the District of Columbia

Notary Public for the District of Columbia

Notary Public for the District of Columbia

Notary Public for the District of Columbia

Notary Public for the District of Columbia

BEST COPY AVAILABLE

176a
USA-33s-184 - NOTICE OF SETTLEMENT - Judge's Signature

AGB:as
37853

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v-

ROOSEVELT CAPITAL CORPORATION
and RAY PIERSON,

Defendants.

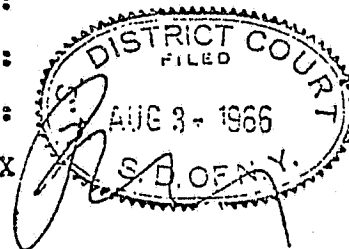
DOCKETED AS
JUDGMENT # 88103

ON August 4, 1966

AT 10:30 A.M.

NOTICE OF
SETTLEMENT

65 Civ. 162



S I R :

PLEASE TAKE NOTICE that the within Judgment will be presented for settlement and signature to the Honorable Edmund L. Palmieri United States District Judge, at the office of the Clerk, Room 601, United States Court House, Foley Square, Borough of Manhattan, City of New York, on the 3 day of August 1966, at 10:30 a'clock in the forenoon, or as soon thereafter as counsel can be heard.

Dated: New York, N.Y.

July 27, 1966

Yours etc.

ROBERT M. MORGENTHAU

United States Attorney for the
Southern District of New York
Attorney for

Office & Post Office Address:
United States Court House
Foley Square

Borough of Manhattan
City of New York, N.Y.

Tel: 264-6328

TO:

SAXE, BACON & BOLAN, ESQS.
598 Madison Avenue
New York, N. Y. 10017
Attention: John F. Lang, Esq.

RAY E. PIERSON
3270 Oakshire Drive
Los Angeles, California

MICROFILM

AUG 4 1966

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

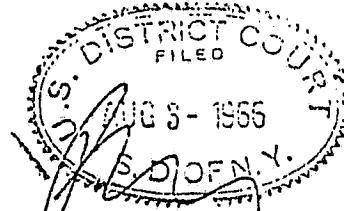
-----X
UNITED STATES OF AMERICA,

Plaintiff,

-v-

ROOSEVELT CAPITAL CORPORATION
and RAY PIERSON,

Defendants.
-----X



JUDGMENT

65 Civ. 162

Plaintiff, United States of America, having moved for judgment herein pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure and the motion having come on for hearing before me on July 26, 1966 and Robert M. Morgenthau, United States Attorney for the Southern District of New York (Alan G. Blumberg, Assistant United States Attorney of counsel) having appeared in support of said motion and

no one

having appeared in opposition and said motion having been granted

NOW, therefore it is hereby ordered, decreed, determined and adjudged:

1. That defendant Roosevelt Capital Corporation, a Small Business Investment Company, has violated and failed to comply with the provisions of the Small Business Investment Act and the regulations issued thereunder.

AGH:brm
37853

2. By reason of said violations of the Small Business Investment Act and pursuant to Section 307(d) thereof, 15 U.S.C. §667(d), the Small Business Administration is hereby authorized to declare forfeited any and all rights, privileges and franchises of Roosevelt Capital Corporation derived from said Small Business Investment Act.

3. Defendant Roosevelt Capital Corporation is indebted to the plaintiff United States of America in the sum of \$157,229.17 plus interest from February 8, 1964, at the rate of \$20.833333 per diem totalling \$18,625.00 plus the costs and disbursements of this action, and the Clerk is hereby directed to enter judgment therefor.

4. The Order of this Court entered March 5, 1965, appointing a Receiver of the funds, assets and properties of Roosevelt Capital Corporation and enjoining the defendants, and others from disbursing any assets of Roosevelt Capital Corporation and/or interfering in any way with the said Receiver shall continue in full force and effect until the further order of this Court.

5. The said Receiver shall continue his efforts to recover assets of Roosevelt Capital Corporation for the purpose of satisfying the judgment entered herewith.

Dated: New York, New York
July 3, 1966

AUGUST 3, 1966

Edw. J. Lammie
U. S. D. J. WKK

Judgment Entered: August 3, 1966

John F. Allen

A TRUE COPY
THOMAS E. ALLEN, Clerk
By *Edw. J. Lammie*
Deputy Clerk

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U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Date: March 9, 1973
Reply to
Attn of: Accounting Branch
Subject: ROOSEVELT CAPITAL CORPORATION
Brooklyn, NY
License Number - 02/02-0108
To: LAD:SBA
Imperial Building
Attn: John Sharp
Room 716

The enclosed Statement of Account is furnished in compliance
with the request of/from John Sharp dated March 9, 1973.

S. F. Shepherd *SFS*

Supervisor, Loan Accounting Liquidation-

Enclosure

EXHIBIT D
699

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SMALL BUSINESS ADMINISTRATION

Washington, D. C. 20416

CERTIFIED STATEMENT OF ACCOUNT

As of March 9, 1973

(Interest accrued on unpaid balance through above date)

License Number ~~XXXXXXXXXX~~ 02/02-0108 Name ROOSEVELT CAPITAL CORPORATION
Address (Include ZIP Code) Brooklyn, NY

Total amount XXXXXXXXXX	
XXXX OF JUDGMENT	\$ 168,645.83
*Care and preservation of collateral	
*Recoverable expenses	41.40 \$ 168,687.23
Less: Repayments	
Current balance	168,687.23
Add: Accrued interest	66,800.14
Total charges outstanding	235,487.37
Less: Escrow balance	
TOTAL INDEBTEDNESS	\$ 235,487.37

Daily interest accrual on current balance \$28.114538
Date of Last Transaction 8/3/66 Interest Paid Through
Judgment Rendered

Certified to be a true and accurate statement as reflected by the official accounting records of the Small Business Administration

S. F. Shepherd *SF*

March 9, 1973

Authorized Signature and Title

Date

Supervisor, Loan Accounting Liquidation

*Balance as at January 1, 1965 and/or subsequent disbursements.

Regional Office

SBA Form 596 B (1-68) EDITION OF 10-66 WILL BE USED UNTIL STOCK IS EXHAUSTED

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**Transcript of Deposition of Patrick J. Mastronardo,
Taken by United States on March 26, 1965, in Action
Entitled "*United States of America v. Roosevelt
Capital Corporation and Ray Pierson*," U.S.D.C.,
S.D.N.Y., Civil Action No. 65 Civ. 162 and
Exhibits Annexed**

182a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
:
UNITED STATES OF AMERICA,
:
Plaintiff,
:
vs. 65 Civ. 162
:
ROOSEVELT CAPITAL CORPORATION
and RAY PIERSON,
:
Defendants. :
-----X

Deposition of Franklin National Bank by
PATRICK J. MASTRONARDO, taken by plaintiff,
pursuant to notice dated March 11, 1965,
at the United States Court House, Foley Square,
New York, N. Y., on March 26, 1965, at
10:30 a.m., before Murray Deutsch, a Certified
Shorthand Reporter and Notary Public of the
State of New York.

APPEARANCES:

ROBERT M. MORGENTHAU, ESQ.,
United States Attorney for the
Southern District of New York;
Alan G. Blumberg, Esq., Assistant U. S. Attorney
and
Bernard Kulik, Esq., Attorney, Small Business
Administration.

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER, ESQS.,
Attorneys for Franklin National
Bank;
Sheldon Oliensis, Esq., and
Donald Spiegelman, Esq., of Counsel.

Also Present: Mortimer Todol, Esq.

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WITNESS INDEX

<u>Name</u>	<u>Page</u>
Patrick J. Mastronardo	2

EXHIBIT INDEX

<u>Plaintiff</u>	<u>Page</u>
1 (1d) Photostat of letter dated May 14, 1964, addressed to Samuel Stone, Esq.	9
2 (1d) Photostat of letter dated May 14, 1964, addressed to Franklin National Bank.	9
3 (1d) Four photostat pages of handwritten notes.	21
4 (1d) Resolution of Roosevelt Capital Corporation.	41
5 (1d) Photostat of ledger sheet of Roosevelt Capital Corporation.	42
6 (1d) Photostat of two bank debit memos.	43
7 (1d) Document headed "Received the following common stock certificates of Roosevelt Capital Corporation.	56
8 (1d) Photostat of letter of May 20, 1964 addressed to Mr. Patrick J. Mastronardo.	60
9 (1d) Photostat of letter dated May 26, 1964, addressed to Mr. Sidney Tolmage.	60

IT IS HEREBY STIPULATED AND AGREED by
and between counsel for the respective parties
hereto that the sealing, filing and certification of
the within deposition be waived; that such deposition
may be signed and sworn to before any officer
authorized to administer an oath.

IT IS FURTHER STIPULATED AND AGREED that
all objections, except as to form, are reserved
to the time of trial.

P A T R I C K J. M A S T R O N A R D O,
called as a witness, being first duly sworn
by the notary public, testified as follows:

EXAMINATION BY MR. BLUMBERG:

Q Where do you reside?

A 117-71 126th Street, South Ozone Park,
Queens.

Q By whom are you employed?

A Franklin National Bank.

Q What is the address of your place of

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employment?

A 130 Pearl Street, New York City.

Q How long have you been employed by the Franklin National Bank?

A 14 months.

Q In what capacity are you employed by the bank?

A I am assistant vice-president.

Q Have you been assistant vice-president for 14 months?

A No. Since approximately say April or May of last year. I forget the exact date.

Q In what capacity were you employed prior to April or May 1964?

A I was assistant cashier.

Q Were you employed previously in the banking business before being employed by the Franklin?

A Yes.

Q By whom?

A Irving Trust Company.

Q At what branch or address were you employed by the Irving Trust?

A At 233 Broadway, New York City.

Q How long were you employed by them?

A About 17 years.

Q Did there come a time while you were employed by the Franklin National Bank that you learned of a corporation known as Roosevelt Capital Corporation?

A Yes.

Q When did you first learn of that corporation?

A In May of last year.

Q May of 1964?

A That is correct.

Q Would you describe the circumstances under which you learned about Roosevelt Capital Corporation?

A In May of last year at a reception given by the Franklin National Bank to mark the opening of its new office in New York City located at Hanover Square, I was introduced to an individual by the name of Lonnie Olanow. That individual represented himself as the prospective purchaser of Roosevelt Capital Corporation. That is my first contact with that company.

Q Do you recall who introduced you to Mr.

Olanow?

A Yes.

Q Who was it?

A William B. Wallace, vice-president of the Roosevelt Field office of Franklin National Bank.

Q Do you recall anything that Mr. Wallace told you about Mr. Olanow or about Roosevelt Capital Corporation?

A Mr. Wallace had not known Mr. Olanow prior to the day he introduced me to him. He was introduced as a prospective purchaser of Roosevelt Capital Corporation.

Q Do you recall the date of the reception?

A It's in the record. I could determine it from the records.

Q Will you please determine that date?

(Witness examines documents.)

A May 13, 1964.

Q Did you then have a conversation with Mr. Olanow concerning his proposed purchase of Roosevelt Capital Corporation?

A Yes.

Q Would you describe what took place in

that conversation?

A He mentioned that he was going to acquire Roosevelt Capital Corporation. He asked at that time whether, for his convenience and for the convenience of the sellers, whether they could use a conference room in our building at 130 Pearl Street, to which I agreed.

Q Was a date set for the closing of this purchase?

A Yes, as far as I know. The closing took place the following morning at approximately 10 o'clock.

Q 10 o'clock on May 14, 1964?

A Yes.

Q Were you present at the closing?

A For part of the time, yes.

Q Do you recall the names of any of the people present at that closing?

A Yes, I recall some of the names.

Q Would you state the names you recall, please?

A Mr. Olanow, Ray Pierson --

Q What was Mr. Pierson's capacity, if you know? In other words, whom was he representing?

A He was an associate of Lonnie Olanow in the buying group.

Q Do you recall anyone else being present?

A Yes. Samuel Stone -- I believe, although I am not certain, he was an attorney for the buying group. Additionally, I recall Sidney Tolmage, an attorney for the selling group, as being present. There were other people present, but I don't recall their names.

Q Prior to the closing had Mr. Olanow made any arrangements with the Franklin National Bank for the financing of his proposed purchase of this stock?

A None whatsoever.

Q Are you aware how the purchase was financed?

A I couldn't say with any certainty.

Q Did the Franklin National Bank issue checks payable to Sidney Tolmage on that date?

A That is correct.

Q Would you describe the circumstances under which it issued the checks, please?

A Yes. During the conference either Mr. Olanow or Ray Pierson -- I don't recall which

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one -- came to me and asked whether we could, as a matter of convenience, assist them by issuing two official checks. Apparently, to effect this closing it was required that they present certified checks. They stated that they were from out of town and could not produce certified checks and asked if we would issue, instead, official checks. This was done primarily to service our customer, the selling group, and that is about it.

Q Do you recall the amount of the certified check or checks that were issued?

A Yes, there were two checks issued, one in the amount of \$118,000, the other in the amount of \$42,000, both checks being payable to Sidney Tolmage.

Q What security, if any, did the bank receive for issuing these certified checks?

A I was told that by virtue of this acquisition the company would have available to it \$187,000 in cash representing the proceeds of matured treasury bills. We were authorized by Ray Pierson, by letter, to issue official checks against this cash fund.

Q When were the treasury bills delivered

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to you?

A The Treasury bills had matured on that day, and the cash proceeds were available in our Roosevelt Field, Long Island, office on that day. This I verified. Simultaneously, I obtained a copy of a letter that had been given from the attorney for the seller, Sidney Tolmage, addressed to Samuel Stone.--that letter is in the record, I believe.-- indicating that the funds were available to the buying corporation -- were already made available to the buying corporation.

MR. BLUMBERG: Off the record.

(Discussion off the record.)

MR. BLUMBERG: Would you mark these, please.

XX (Photostat of letter dated May 14, 1964, addressed to Samuel Stone, Esq., marked Plaintiff's Exhibit 1 for identification.)

XX (Photostat of letter dated May 14, 1964, addressed to Franklin National Bank, marked Plaintiff's Exhibit 2 for identification.)

Q Mr. Mastronardo, I show you Plaintiff's Exhibit 1 for identification and ask you if that is the letter you just referred to from Mr. Tolmage

with respect to the release of the proceeds of the treasury bills (handing).

A This is the letter.

Q I show you Plaintiff's Exhibit 2 for identification and ask you if that is the letter you refer to from Mr. Pierson authorizing the bank to issue the bank checks in the amount of \$160,000 (handing).

A That is the letter I referred to.

Q Do you recall any discussion with Mr. Tolmage with respect to the issuance of these bank checks and the making available of the proceeds of the treasury bills?

A I don't recall whether or not we had any conversation or the nature of the conversation. He was present while this was being discussed, but I do not recall whether he was a party to the conversation.

Q Precisely what was the nature of the bank's rights with respect to the proceeds of these treasury bills? Did the bank obtain an immediate right to charge the account of Roosevelt Capital for these proceeds?

A Initially, we obtained a resolution from

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the buying group authorizing Ray Pierson, amongst others, to act on behalf of the corporation. A copy of that resolution is on file.

Q Was the next step then to obtain the letter which is Plaintiff's Exhibit 2 from Mr. Pierson?

A Yes, that is correct.

Q What you are saying is that this letter, which is Plaintiff's Exhibit 2, created an obligation of Roosevelt Capital Corporation to repay the bank for \$160,000 that it had advanced, is that correct?

A The advance was not made until we received the proper corporate resolutions and until we received the letter from Roosevelt Capital Corporation signed by Ray Pierson which you have referred to.

Q At the time the bank issued these two checks totaling \$160,000, the bank had in its custody at the Roosevelt Field branch, proceeds in treasury bills in the amount of \$180,000, is that correct?

A \$187,000 is the exact figure. I verified that this money was available at the time.

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Q Was Mr. Wallace present at the closing?

A No, he was not. He had nothing to do with the closing. He did not know the buying group at all.

Q Just reviewing again, Mr. Mastronardo, after you received the corporate resolutions and the letters that you have just referred to, was it you who caused the bank to issue the two official checks in the amount of \$118,000 and \$42,000?

A Yes.

Q Did you then deliver the checks to one of the parties at this closing?

A Yes, I gave the checks to the buyers who in turn delivered them to Sidney Tolmage, the payee.

Q Do you recall the individual to whom you delivered them on behalf of the buyers?

A I don't recall the individual. We were there as a group, and I merely passed them on to the buyers, either Pierson or Olanow, I would believe, although I can't say with certainty.

Q In your presence, you observed the representative of the buyers deliver the two checks to Mr. Tolmage representing the sellers?

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A Yes.

Q Did you also observe the sellers delivering stock certificates to the buyers?

A Yes.

Correction: They were delivered to the buyers, and the buyers asked that we retain them over the weekend for safekeeping, and subsequently we delivered the stock certificates to the buyer the following Monday, I believe. Incidentally, we have a receipt for the securities delivered to the buyers, which is in the file.

Q Did you observe what was done by the sellers with either of the two checks that were delivered to them?

A Yes, I did.

Q Would you describe that, please?

A The official check for \$118,000 was endorsed by Sidney Tolmage, the payee, to the order of Roosevelt Capital Corporation and delivered to the buyers for deposit into the account of Roosevelt Capital Corporation being opened at the Hanover Square office that day. The second check for \$42,000 was retained by the sellers, Sidney Tolmage.

Q Do you know the reason why the \$118,000 check was endorsed back to Roosevelt Capital Corporation?

A I can only guess from conversation that I overheard. I couldn't say with certainty.

Q Describe the conversations you overheard then, if you can.

A I believe it had something to do with the purchase of assets of the Roosevelt Capital Corporation by the selling group. Apparently, there were some assets which were repurchased by the selling group, and this check was in payment for those assets.

Q When you mentioned the Hanover Square branch, is that the 130 Pearl Street address you referred to earlier?

A Yes.

Q Was the Franklin National Bank ultimately repaid for the \$160,000 in official checks that it issued?

A It was repaid at the time of the issuance in that we charged the account of Roosevelt Capital Corporation for the amount of those checks. The proceeds of the matured treasury bills -- that is, \$187,000 in cash -- was credited on the day of closing.

to the account of Roosevelt Capital Corporation which account was opened at the 130 Pearl Street office.

Q Let me see if I understand it then. The proceeds of the treasury bills were available at your Roosevelt Field office?

A Yes.

Q You had verified that?

A Yes.

Q So through bookkeeping or other transaction the proceeds were transferred to your Hanover Square office?

A Correct.

Q And the bank charged the account at Hanover Square for \$160,000?

A That's correct, the total amount of the two checks.

Q You are quite sure that is the way it was done?

A That's right. This will be borne out by the record. There is a credit of \$187,000 to the account effected as of the date of the closing.

Q Did you observe anything else that occurred at the opening?

A Well, we were not a participant in the closing, we did not see the underlying contract of sale or purchase. Our only function was to issue these checks which had been requested on the spot without any prior notice.

Q Going back for a moment to the reception, did you learn anything about the nature of the business of Roosevelt Capital Corporation on the day of the reception?

A Yes. I was told by Lonnie Olanow and by William Wallace, our vice-president at the Roosevelt Field office, that Roosevelt Capital Corporation was an SBIC.

Q Did you know what SBIC stood for?

A Yes.

Q Will you state it for the record?

A Small Business Investment Company.

Q Did you have any knowledge what Small Business Investment Company meant?

A Yes, it's a corporation formed to loan money to private businesses.

Q Is that all you knew about Small Business Investment Company?

A That is about all I knew. I hadn't

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given it any further thought at the time.

Q Were you aware they were licensed by the Small Business Administration of the United States?

A Yes.

Q Were you aware that funds were furnished to these companies by the Small Business Administration?

A I don't believe so. I really don't know.

Q After the time the checks were delivered by the buyers to the sellers, the stock certificates were delivered to you, and the \$118,000 check was transferred back to Roosevelt Capital Corporation, did you remain at the conference room?

A I was in the conference room for some time because the closing extended over quite a lengthy period of time. I don't recall exactly how long I was in there, but it was for some time.

Q Did it continue into the afternoon?

A It probably did, but I can't say with certainty.

Q Did you observe any board of directors meetings, or any other meetings occurring at the termination of the closing?

A No, I didn't. At the termination of

the closing, no, I didn't observe any such meetings.

Q Were you there when Mr. Tolmage left?

A I can only guess. I believe so, but I cannot say with certainty. There were quite a number of people in and out, and they were all new to me. I didn't know anyone at the time.

Q Did you observe any of the transactions undertaken by the buyers of Roosevelt Capital Corporation at the closing or immediately after the closing?

A Well, it may be that immediately after the closing they may have transferred some other funds to other corporations. This may have been done the same day or the following day. I don't recall now whether it was done the same day or the following day.

Q Did you meet with the buyers again on the date following the closing?

A They came into the office at 130 Pearl Street.

Q What transpired on the day following the closing?

A I have to refresh my memory by looking at the records.

(Documents handed to the witness.)

A I had made notes at that time because a number of transactions had taken place, and I wanted to keep a record of what had taken place.

Getting back to a prior question, you asked me if anything took place at the opening or immediately after the closing. From the notes which I made back in May 1964, I do see that a check was issued by the Roosevelt Capital Corporation in the amount of \$60,000 payable to the order of United Film World and deposited in an account opened in that name.

At that same time United Film World issued a check on its new account payable to order of Ray Pierson in the amount of \$42,000, which check was endorsed by Ray Pierson to order of Roosevelt Capital Corporation and deposited in the new account of Roosevelt Capital Corporation.

This means that at the time, May 14, Roosevelt Capital Corporation received three items on deposit: One, the proceeds of the matured treasury bills in the amount of \$187,000; two, the official check that had been issued to order of Sidney Tolmage and endorsed back to order of

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Roosevelt Capital Corporation; and three, the check I have recently referred to issued by United Film World to order of Ray Pierson endorsed to United Film World for deposit into the account of Roosevelt Capital Corporation.

This means there was a total of \$347,000 to deposit in that new account.

On May 14, after the closing, Roosevelt Capital Corporation was charged with the official check of \$118,000, payable to Tolmage, the official check of \$42,000 payable to Tolmage, and the check that had been issued in the amount of \$60,000 by Roosevelt Capital Corporation, not an official check, in the amount of \$60,000. This making the total charges to the account as of that day \$220,000, leaving a balance in the account of \$127,000.

On May 14, at the same time, United Film World issued a check payable to order of Ray Pierson in the amount of \$10,000, which was a charge to that account.

That, I believe, summarizes what took place on May 14.

Q Would you tell me what the documents are

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that you are reading from, please?

BM

A These are handwritten notes that I had prepared in May 1964 which include a recapitulation of what I had scribbled out on the day of the closing in order to know what had taken place. There were, as you see, a number of checks issued, and I wanted to make sure that they all were properly processed through the various accounts. These notes have been retained in our file and never destroyed. I have two sets of notes which I made at the time.

NR. BLUMBERG: I am going to have them marked as one exhibit unless there is some objection.

(Four photostat pages of handwritten notes marked Plaintiff's Exhibit 3 for identification.)

Q I show you Plaintiff's Exhibit 3 for identification, and ask you if those are the notes which you stated you made at the time of the closing describing the various checks that were issued, some by Roosevelt, some by the bank, and describing other transactions?

PM A Yes. These notes were prepared by me in May 1964 from an informal handwritten record made shortly after the buyers left the office.

Q Did the buyers tell you why they entered any of these transactions?

A Yes, the transactions referred to in subsequent transfers from Roosevelt Capital Corporation were indicated to me to be loan transactions and, I believe, some of the checks were so marked or so described as "loan."

Q Did they tell you why they would have Roosevelt Capital Corporation make a loan of \$60,000 to United Film World and then have United Film World make a check out to Mr. Pierson for \$42,000 and then have Mr. Pierson endorse it right back to Roosevelt Capital Corporation?

A I asked, because this appeared unusual, and I was told this represented loan transactions and settlement of preexisting obligations, the nature of which I do not recall, if I were told at the time, but I was satisfied at that time.

Q Do you recall who told you that?

A I am sure Ray Pierson was one of the individuals who told me this. I do not know if Lonnie Olanow also mentioned this, but, Pierson, if my memory serves me correct, did most of the talking.

Q Going back to the issuance of the two bank checks, did the buyers tell you why they

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wanted the sum broken down into two checks?

A As I mentioned before, I can only guess at this. I believe the check of \$118,000, which was endorsed back to the corporation by the payee, was the value of certain assets that were going to be retained by the sellers. The second check of \$42,000, as indicated before, was retained by the attorney for the sellers, namely, Sidney Tolmage.

Q Is what you are saying that they did not specifically tell you why they wanted the two checks but you presumed from the fact one of the checks was returned that the reason they wanted two was so that they could return one to Roosevelt and have the sellers keep the other one?

A I received this impression at the conference while I was there. There was a great deal of discussion on this point and others, the exact nature of which I do not recall, but I definitely was left with the impression that this was the purpose of the \$118,000 check.

Q Do you recall who were the parties to the discussion?

A I could not recall with certainty, but I can only guess. I believe there was Pierson,

Olanow, and Sidney Tolmage, and other representatives of the sellers that may have been present.

Q Were you introduced to any officers or representatives of a corporation known as Trans-World Theatricals, Inc., at the closing?

A I don't believe so. Not at the closing. Let me just check to see who they are.

MR. BLUMBERG: Off the record.

(Discussion off the record.)

A I was introduced to the principals of Trans-World Theatricals on May 15th, according to the records, because I have a notation here that the account opened on that day.

Q Is that the only notation that you have, that the account was opened?

A The account was opened on May 15 with a check issued by Roosevelt Capital Corporation to order of Trans-World Theatricals, Inc., and deposited in an account for the latter corporation. The amount was \$60,000.

Q What I am interested in ascertaining, Mr. Mastronardo, is whether you recall personally meeting or talking to any of the officers or principals of Trans-World Theatricals.

A Yes, I had several meetings and conversations with the principals of Trans-World Theatricals, Inc.

Q Do you recall their names or do your notes indicate their names?

A Yes. Their names are Alan Sherwood, Martin B. Cohen, and John W. Jordan. I recall having been introduced to these gentlemen.

Q Did you meet them on the day of the closing of the Roosevelt Capital transaction?

A They were not present at the closing. I may have met them after the closing, but I am not sure. They were not parties to the closing in any way.

Q Were they present at the bank's office on the afternoon of the day of the closing?

A I can only guess. I believe so, but I can't say with certainty.

Q Were you a party to or did you overhear any discussions between representatives of Roosevelt Capital Corporation and representatives of Trans-World Theatricals with respect to the loan being made by Roosevelt to Trans-World?

A Yes. I was present while they had

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discussed the opening of a play, and I believe the name of that play to be International Playgirls. I recall the play did in fact open, and closed the following day from reports in local newspapers.

Q Do you recall any discussion with respect to a simultaneous payment by Trans-World to a corporation known as Contractors Guild?

A Yes. On the day the account was opened in the name of Trans-World Theatricals, Inc., two checks were issued against that account, one for \$10,000 payable to International Playgirls Corporation, and the other to Contractors Guild, Inc., in the amount of \$44,000.

Q Do you recall any discussions between the principals with respect to that \$44,000 payment?

A No. All that I know is that the amount of that check was used to open an account in the name of Contractors Guild, Inc.

Q Do you have a signature card for that account in your possession?

A Yes, we do have signature cards on each of these accounts.

Q Do you know, of your own recollection,

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who the officers of Contractors Guild, Inc., were?

A I recall that Ray Pierson is an officer, but the file will show the other officers.

Q With respect to the principals in these various transactions, Mr. Mastronardo, does the name of Francis Peter Crosby or Peter Francis Crosby mean anything to you?

A Yes, the name did appear in investigations we made on Ray Pierson personally and S. Lonnie Olanow..

Q When were those investigations made?

A I can tell from the records.

Q In which records would they be?

A Probably Roosevelt Capital Corporation.

In a report from a mercantile credit agency on Samuel Olan, also referred to as Samuel Lonnie Olanow, there is a reference to Peter Crosby III, and in a telephone call we made to a California banking institution as a reference for Ray Pierson the name "Crosby" also was mentioned. It is in the record.

Q Did you ever meet Mr. Crosby?

A No, I have never met Mr. Crosby.

Q Was Mr. Crosby's name mentioned at the

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closing, if you recall?

A Not at the closing. Ray Pierson and perhaps the other principals mentioned the name several times. They spoke of theatrical ~~expenses~~^{ventures} PM ~~that~~ that they had planned to undertake at a later date.

Q Do you recall when those discussions took place?

A This was in the office of the Franklin National Bank at 130 Pearl Street. It was just conversation. There was no particular purpose in the talk at the time.

Q What I would like to have you recall is whether these discussions took place on the afternoon of the day of the closing or at another time, if you remember.

A I do not remember any discussion during the closing in which the name of Crosby was mentioned.

Q But you do recall discussions at some later point with Mr. Pierson or Mr. Stone, is that what you said, at which time Mr. Crosby's name was mentioned?

A Yes, the name was mentioned, but we never got down to any specifics.

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Q Does the name David Fisher mean anything to you?

A No, I don't recall the name.

Q What was the reason for your credit investigations of Mr. Olanow and Mr. Pierson?

A Just sound banking practice. To know the people with whom you are dealing.

Q Was this a procedure which would be followed in the case of any corporate depositor?

A Yes.

Q That you would make an investigation of the principal officers of the corporation?

A Yes.

Q When were the investigations initiated?

A I could tell from the record. On May 20 we telephoned a Canadian Banking institution on Lonnie Olanow. And at approximately the same time we checked with a local credit agency on that individual and received an oral report which is summarized in the file. At approximately the same time we also checked with a California banking institution given by Ray Pierson as a reference.

Q What was your conclusion with respect to your investigation of Mr. Olanow? Was he favorab

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or unfavorable?

A Highly unfavorable.

Q What was your conclusion with respect to Mr. Pierson?

A Satisfactory reports were received.

Q What action did you take, if any, on receipt of these reports?

A I asked to see Lonnie Olanow privately, and at that time told him to make other banking arrangements for both Roosevelt Capital Corporation, himself, and other corporations that he or his associates had introduced at the bank.

Q Do you recall or do you have a memorandum of the date of that conversation?

A I don't have a memorandum on it, but I may be able to tell from the file.

(Witness examines documents.)

A It was sometime between May 20 and May 25. I do not have the exact date in the file. I gave Olanow a few days to allow outstanding checks to clear and to make other banking arrangements, but I insisted that the accounts be transferred elsewhere. He made no objection whatsoever, nor did he ask why.

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Q Did you have any communication with the sellers of the stock of Roosevelt Capital Corporation with respect to the results of your investigation?

A Yes. I was unhappy over the results of my investigation and I called the sellers to find out exactly who these people were which had been introduced to us as customers.

Q Who did you speak to on behalf of the sellers?

A I don't recall definitely. Probably it was either Sidney Tolmage or a Mr. Shapiro.

Q Charles Shapiro?

A I am not sure of his first name, but he, I believe, was the one most active in his relationship with the bank prior to this time.

Q Will you relate, as much as you can, the conversation you had with the representative of the sellers?

A Yes. I made two observations. First, the unfavorable credit reports. Secondly, that it appeared that no outside funds were coming into this operation, which raised a serious question in my mind. I wanted to get an explanation from the sellers.

Q When you say no outside funds were coming in and this raised a serious question, would you be more explicit, please, as to what you mean?

A Yes. I had assumed that other monies would be coming in other than from the \$187,000 in treasury bills that was credited to the new account.

Q What was the ground of your assumption, or the reason for it, if there was one?

A The principals initially spoke of not having certified checks available to buy this company, so I assumed there were other monies coming in, and that our issuing the official checks was merely a convenience to assist both the buyers and sellers in this instance. This added to the fact that we had an unfavorable credit report created the suspicion in my mind.

Q Do you remember anything further that you told to the representative of the sellers at that time?

A Well, the gist of it is what I said before, that we have had these unfavorable reports, no outside funds were coming in, and I just did not like the smell of the entire situation, in effect.

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Q Do you recall the date of that conversation?

A No, I do not, but it wasn't too long after we asked the accounts to close.

Q When you say not long, would you say within a week or so, or less than a week?

A I'd say within a week or two. It may have been earlier, it may have been later. I don't really remember. I know I was unhappy over having been saddled with these accounts which were not acceptable by our standards.

Q Did you have any discussions with Mr. Wallace with reference to this problem?

A Yes. I called Mr. Wallace and I said, "Where did you meet Mr. Olanow?. I received these unfavorable reports."

He said that he only met him at the reception that evening and knew nothing else other than what he had told me at the time.

Q Do you know whether Mr. Wallace had any communication with the sellers with respect to this problem?

A I informed Mr. Wallace of the situation and he may have passed it on to the sellers. I

would guess that he did.

Q You do not know, though?

A I don't know.

Q Do you recall any response by the representatives of the sellers, any remarks that he made during the telephone conversation?

A Yes, they were quite upset about it. They were disturbed about the situation.

Q When you say "they," --

A I meant the individual I spoke with.

Q Do you recall whether it was an individual at the Garden City office of the corporation or in New York City that you telephoned?

A I can guess that I spoke with Shapiro, because probably I called Wallace and said, "Who can I get in touch with at Roosevelt Capital Corporation?" The chances are he informed me of Shapiro. I did not put this in our file, but the chances are I spoke with Shapiro, or it may have been Tolmage.

Q Do you recall anything specifically that was told to you by the representative of the sellers at that time?

A I think they were surprised. At least that is the impression he gave me.

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Q Did he say he would take any action or do anything with respect to the problem?

A He did indicate he was going to give the matter serious thought. He didn't tell me what action he would take.

Q Fixing the date, approximately, the closing occurred on or about May 14?

A Yes.

Q You received the unfavorable credit information on or about the 20th of May, is that correct?

A Right, yes.

Q And within a few days thereafter you called Mr. Olanow into your office, is that correct?

A No. He had office space with a law firm somewhere downtown. I don't recall the address. I managed to get in touch with him there, and at that time I asked if I could speak to him privately. We went into a separate room, and I told him that I would want him to make other banking arrangements immediately.

Q And this was within a few days after May 20, 1964, that you had that conversation?

A Yes.

Q And it was within a week or so, or perhaps even prior to that date, that you spoke with a representative of the sellers?

A I would say -- and this is guesswork on my part -- that I spoke with the sellers after I told Olanow. One reason why I may have hesitated a day or two, I wasn't entirely sure that the report I received on Olanow was in fact on the individual that was a member of the buying group. I wanted to be certain that I had the right man.

Q When you spoke to Mr. Olanow, did that confirm that you had the right man?

A He made no reply. He just said, "Yes, I will do so," and made no comment or asked no questions.

Q When you went to see Mr. Olanow, do you recall whether that was at 30 Broad Street?

A It may have been. I know it was on an upper floor in a building in the downtown area not too far from 130 Pearl Street.

Q Sometime after your conversation with Mr. Olanow was the account of Roosevelt Capital Corporation transferred from the Franklin National

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Bank?

A Yes. Ray Pierson and another individual, whose name I do not recall, came to the bank, issued a company check in the amount of \$67,000, the then existing balance, which we certified. This closed out the account.

Q Were the accounts of Contractors Guild and United Film World also closed at that time?

A They may not have been closed the same day, but they were closed at approximately the same time. On two of the accounts they were not closed as quickly as I wanted them to be closed, so I issued official checks for the balances, which were nominal. Thereafter, the checks were re-presented to me with the explanation that they had issued checks which were still outstanding against the amount they thought they had on deposit, and they asked would I take these checks back into the account temporarily, which I did, and then within a short time thereafter we did close out the accounts again.

Q After the accounts were closed, did you have any further contact or communications with any of the people you knew as the principals

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of Roosevelt Capital Corporation and Contractors Guild and United Film?

A Yes.

Q Would you describe when that took place?

A Shortly thereafter, we received from a reputable broker 1,000 shares of Texas Gulf Sulphur for the account of Lonnie Olanow. The broker said that he had instructions to collect the payment from us. I think it was \$58,000. The stock was selling at \$58 a share.

We had no such instructions nor did we have any intention of paying for this stock. I tried to assist the broker in locating Lonnie Olanow. I gave him whatever information I had as to his residence or business address. The broker continuously called me for about a week or two and finally, I imagine, resolved the situation, because I never heard any further from him.

I would like to add that Lonnie Olanow did come into the bank after the accounts were closed, I believe we issued an official check or certified a check for several thousand dollars, which he did not use, and he wanted to cash that check. He turned the check into us and

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we gave him cash for it.

Q I gather you returned the thousand shares of Texas Gulf Sulphur stock to the broker when you decided you were not going to pay for it, is that correct?

A We never accepted delivery.

Q What was the name of the broker?

A I don't recall. I do recall it was a leading brokerage firm.

Q Was it Carl M. Loeb, Rhoades & Company?

A Yes, I believe so, now that you have mentioned it.

Q Did the broker explain why the shares had been sent to you?

A Apparently the salesman who took the order received instructions from Lonnie Olanow to deliver them to my attention at the Franklin National Bank for his account. This, incidentally, was only a day or so after I had told Lonnie Olanow to make other banking arrangements, so chances are he gave these instructions prior to my talk to him about removing the accounts.

Q Do you recall the name of the person who you spoke to at Loeb, Rhoades?

A He was not the salesman. Apparently he was an executive in the company. I don't recall his name now.

Q Do you have any further knowledge of what happened to the thousand shares of Texas Gulf Sulphur, whether the purchase price was ever paid?

A No, I have no knowledge, other than I saw the complaint.

Q In this action?

A In this action.

Q Does the name Calise mean anything to you?

A Yes. He is a principal, or was a principal in one of the accounts that opened with us. He came into the bank several times, but we had, other than the account relationship, no dealings with him.

Q Do you recall whether he was present at the closing?

A No, he was not present at the closing. To the best of my memory, I don't believe so.

Q Mr. Mastronardo, earlier you referred to a resolution of Roosevelt Capital Corporation authorizing Mr. Pierson to undertake transactions on behalf of the corporation.

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A Yes.

Q Will you see if you can find that resolution in the file, because I wasn't able to.

Were you referring to the standard bank resolution form?

A Yes, this is a standard bank resolution form in which Ray Pierson, Samuel Stone and Stewart Wallen were authorized to act on behalf of the corporation individually in any capacity. The corporate seal does appear on the original of this resolution.

Q And this is the resolution you referred to earlier?

A Yes.

MR. BLUMBERG: Would you mark it, please.

(Resolution of Roosevelt Capital Corporation marked Plaintiff's Exhibit 4 for identification.)

Q I show you Plaintiff's Exhibit 4 for identification and ask you if that is the resolution of Roosevelt Capital Corporation to which you referred earlier?

A It is.

xxx

Q Was a gentleman named Stewart Wallen present at the closing?

A I believe so, but I cannot be certain.

Q Do you know anything about Mr. Wallen, where he lives, what his profession is, or anything else?

A I don't recall. I believe he was in the bank once or twice, but I never had any extended conversation with him.

MR. BLUMBERG: Those are all the questions I had to ask. I think Mr. Kulik and Mr. Todel have a few, also.

MR. KULIK: Will you mark this?

(Photostat of ledger sheet of Roosevelt Capital Corporation marked Plaintiff's Exhibit 5 for identification.)

EXAMINATION BY MR. KULIK:

Q Mr. Mastronardo, I show you Plaintiff's Exhibit 5 for identification and ask you if you can identify that for the record, please.

A Yes. This is a copy of our ledger sheet for Roosevelt Capital Corporation while the account was maintained with us.

MR. KULIK: Would you mark this?

(Photostat of two bank debit memos marked Plaintiff's Exhibit 6 for identification.)

xxx

Q Mr. Mastronardo, I show you Plaintiff's Exhibit 6 for identification and ask you if you can identify that document.

A Yes. This is a photostat of two items which were charged to the account of Roosevelt Capital Corporation. The one on the top is a copy of our debit for certifying a check in the amount of \$67,000 to close out the Roosevelt Capital Corporation account which I referred to in earlier testimony.

The lower debit represents charges for the two official checks which were issued on May 14. This charge of \$160,000 should have been made back on May 14, but because of the fact that we had moved our banking operations into New York City from Long Island, the initial debit entries prepared for this purpose were misrouted and never charged to the account until May 26. This debit is to adjust the omission.

Q Insofar as you were concerned the debits should have been made on the 15th?

A Definitely. May 14, that should be.

Q Calling your attention to the first item on Plaintiff's Exhibit 5 -- that is, the first deposit listed on Plaintiff's Exhibit 5 for \$16,000, can you tell us what this represents?

A Yes, this represents a credit for the official check issued to order of Sidney Tolmage and endorsed back to the corporation, which check was in the amount of \$118,000, plus the amount of a check issued by an affiliated corporation, I believe United Film World, in the amount of \$42,000. The two items totaling \$160,000.

Q Would you please explain the first item in the column headed "Checks and Analysis," on Plaintiff's Exhibit 5 for identification?

A This is not clear to me. I would like to refer to the notes which I previously made.

Q I hand you Plaintiff's Exhibit 3 for identification.

A There were seven individual items passed through the Roosevelt Capital Corporation account. Some of them were lumped together. As I mentioned, the official check of \$118,000 and the United Film World check for \$42,000 were combined for the credit

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of \$160,000. There also was a credit of \$137,000 representing the proceeds of the matured treasury bills. On the debit side, under "Checks and Analysis" at the bottom there is an amount of \$160,000 described as "DM." This means debit memo, and it represents a charge for the two official checks issued on May 14, which were not charged to the account until May 26, through an internal error in the bank procedures.

Q I notice two items in the accounts and analysis column, one item of \$16,000 and another of \$2.20, are not reflected in the balance figures.

A The item of \$16,000 should never appear in this column, it has no significance. The reason it was placed here, I cannot explain. As to the \$2.20, this is an analysis cost determination for handling the account which never was directly charged to the account. This would have been an activity charge should the balance in the account not be sufficient to waive it.

Q Is it correct to say that the items of \$16,000 and \$2.20, do not represent checks written by Roosevelt and were not charged against the Roosevelt balance?

A That is correct.

Q Mr. Mastronardo, when Mr. Pierson requested these two official checks from you and indicated to you that they were needed because the purchasers were out-of-towners and could not get certified checks in the city, did they indicate to you in any fashion where the money was to come from -- that is, did they indicate that they had banking connections in any particular city?

A They did not indicate where the certified checks would have come from if they had them in their possession at the time. I did subsequently get bank references from both Pierson and Olanow.

Q To which you have previously testified?

A Yes, I have previously testified on that.

Q Did they exhibit to you any uncertified checks in any amounts?

A They did not.

Q These checks that you had drawn on the account, the two official checks, were drawn and presented to Mr. Pierson prior to the actual physical closing, is that correct?

A No. When I issued these checks it was my clear understanding that the money was available to the buying group in the name of Roosevelt.

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Capital Corporation. I received a letter which the attorneys for the seller gave to Samuel Stone, the attorney for the buyers, in which it is clearly stated that the money was available to the new Roosevelt Capital Corporation.

Q You received the bank resolution form marked as Plaintiff's Exhibit 4, the letter signed by Ray Pierson marked as Exhibit 2, and the letter signed by Sidney Tolmage marked as Plaintiff's Exhibit 1, before you issued these two checks, is that correct?

A Yes. I would not release these checks until I was satisfied that the money was available to support the issuance of these checks.

Q And subsequently the checks were issued, the physical transfer took place in one of the board rooms of the bank?

A In the conference room in my presence. We did not know the buyers at all, and we would not issue official checks for strangers unless we were satisfied as to the availability of the funds and that they were properly introduced.

Q The physical order then was the receipt of these three items, the issue of the checks, the

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physical transfer, and the stocks were left with you for safekeeping over the weekend?

A Yes. I would have no basis to issue the checks otherwise.

Q This next question may be repetitious: Did the bank have any banking relationship with Stewart Wallen?

A Not to my knowledge.

MR. KULIK: I have no further questions.

MR. TODEL: Just two or three questions.

EXAMINATION BY MR. TODEL:

Q About how long were these people in the bank on May 14 at this conference?

A I can only guess. I do remember it was a rather lengthy conference. I would say a few hours, two or three hours.

Q Were you there when they arrived?

A Yes. When they arrived they came to see me. The evening before Olanow had asked to use the conference room and he must have passed the word around that when they come in they are to see me, and they came to my desk, or they were referred to me.

Q And then you took them to the conference room, is that right?

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A Yes.

Q I was wondering if you can recall who was present at this conference other than possibly the people that you have already mentioned. Was Mr. Tolmage present, Mr. Stone, Mr. Olanow, Mr. Pierson?

A I can only guess. I believe Stewart Wallen was present, but I couldn't say with certainty. I do know there were others present, though.

Q Was Mr. Shapiro present?

A The name Shapiro is familiar now that you mention it. He may have been present.

Q Wasn't this a man whom you thought you may have had a conversation with after you found out about Roosevelt Capital Corporation?

A Yes, that's right.

Q Was Mr. Shapiro present at this conference?

A I can only guess. I don't think so, on second thought, but I can't say with certainty.

Q Was Mr. Alexander Eltman present?

A I don't know.

Q Do you know who Alexander Eltman is?

A No, I don't.

Q When you brought these people to the

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conference room, did you just leave them in the conference room?

A I left them in the conference room for a while, but I was back in the conference room when I was asked to issue official checks. I was in and out of the conference room several times, as I recall.

Q And the person who asked you to issue these checks was Mr. Pierson, is that right?

A I believe so. It was either Pierson or Olanow, or both.

Q With reference to these transactions, not in the conference room but afterwards, did you ever hear of the El Morocco Corporation? Did that ever come up?

A Yes. The evening of the reception, during which I first met Mr. Olanow, he represented himself to me and to William Wallace as being either the owner or prospective owner of the El Morocco. After the accounts were closed, I believe -- and I am not certain -- that the check that he brought in that had been issued which he wanted to cash was in connection with that situation, but I do not know that with any certainty.

Q Was the name Wick Investing Corporation

Mr.

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ever mentioned to you?

A No.

Q Did you ever hear of that corporation?

A No, I never heard of it before.

Q Did you ever hear of a man by the name of Mr. Stewart?

A The name seems vaguely familiar, but I can't place him.

Q Did he become, if you can recall, one of the directors of the Roosevelt Capital Corporation after it was purchased?

A I can check on the resolution to see who the officers were, but I do not know who the directors were. The officers are Stewart Wallen, Ray Pierson and Samuel Stone.

Q Was Mr. Stewart present at the conference on May 14?

A I can't say with certainty.

Q You made no record for your own office as to who was present at the conference?

A That is right. I had assumed I would not participate in the conference and I made no preparation for it except to make the room available.

Q Did this come as a surprise to you, that

you were called in?

A Yes, it did.

Q Has this ever happened to you before?

A No, it has not, not these particular circumstances.

Q Was it the practice of your bank to issue checks where there is a corporation being purchased and the money for the purchase of the corporation is actually taken from the corporation itself?

A These were peculiar circumstances. At the time I was asked to issue the checks I felt I had two alternatives, either to issue them or to refuse to issue them. To refuse to do so would be to jeopardize what appears to be a desirable sale on the part of good customers at the bank. To do so I felt would be an accomodation to our customers, and also, as long as I was assured that the money was available to the buyers to back up these official checks I felt I was reasonably safe.

Q Did you discuss this transaction, before you issued the checks, with any other person in the bank?

A No. I took it entirely upon myself.

Q And when you stated you were doing this

for good customers, whom did you consider the good customers?

A The selling group -- Shapiro and his associates.

Q On what did you base the fact that they were good customers?

A They were well known to William Wallace of our Roosevelt office, and he had told me this information.

Q When you say they were well known to Mr. Wallace, what do you mean by well known?

A He said, "These people are very good customers of our office, take good care of them, we have known them for quite some time, help them out, if you can."

In effect, that is what he told me.

MR. TODEL: No further questions.

BY MR. HUMBERG:

Q What, if anything, was Mr. Olanow's relationship to Roosevelt Capital Corporation, if you know?

A He does not appear as an officer of the corporation. However, he did discuss matters pertaining to the corporation with Ray Pierson, and

in particular the issuance of the checks at the time, but I do not know anything for a fact as to whether or not he was a director.

Q Did he make any representations to you about any official connection with the corporation?

A No. Olanow was a quiet sort who didn't say too much.

Q How about Mr. Tolmage? Do you recall any discussions in which Mr. Tolmage participated with respect to the issuance of the two checks by the Franklin National Bank?

A Well, he did endorse one of the checks, the \$118,000 check, back to the Roosevelt Capital Corporation.

Q And Mr. Tolmage also furnished a letter confirming that the treasury funds on deposit at the Roosevelt Field branch were to be -- the language in his letter is -- "released to Roosevelt Capital Corporation"?

A Right.

Q Do you know who asked Mr. Tolmage to prepare this letter or to sign this letter?

A Yes. I told him that I would have to have some written evidence that the treasury bills

were available to the new corporation.

Q Did you tell that to Mr. Tolmage?

A I would believe so, yes. Either directly or indirectly. I insisted upon this. Perhaps I requested it of the buyers to obtain it, but I don't recall whether I spoke directly to Tolmage about the subject.

Q Do you recall any discussions or conversations with Mr. Tolmage which would indicate that he knew that funds of Roosevelt Capital Corporation would be charged for this \$160,000 in bank checks that was issued?

A I can't say that I do know that.

MR. KULIK: I have one more question.

BY MR. KULIK:

Q Mr. Mastronardo, who actually bought the shares of Roosevelt Capital Corporation?

A They were delivered to Ray Pierson and I believe Samuel Stone. I presume they were part of the buying group.

Q They were delivered to Ray Pierson and Samuel Stone at the time of the closing?

A No, they were not. I was asked to hold onto them for safekeeping.

mdr

Mastronardo

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Q Who asked you that?

A Pierson or Stone or Olanow. I can't recall.

Q They were delivered at a later date to Mr. Pierson and Mr. Stone?

A I have a receipt for those securities which were delivered at a later date someplace. It must be in the file,

Here it is.

MR. KULIK: Would you mark this as Plaintiff's Exhibit 7 for identification.

(Document headed "Received the following common stock certificates of Roosevelt Capital Corporation," marked Plaintiff's Exhibit 7 for identification.)

Q Mr. Mastronardo, can you identify Plaintiff's Exhibit 7?

A Yes, this is a receipt for the common stock certificates of Roosevelt Capital Corporation signed by Ray Pierson.

Q I notice there is a handwritten notation in the upper left-hand corner of that receipt. Is that your handwriting?

A Yes, it is. I put this there because

Ray Pierson gave me the impression that he was stalling about taking delivery of the stock certificates. I did not want to assume any custody obligations or any fiduciary obligation in retaining these securities. I had to call him several times to get him to accept delivery.

Q When was that notation made?

A It was made on May 20, I believe, 1964.

Q Would you read that notation into the record, please?

A "We were asked to hold these certificates for safekeeping over the weekend. They were subsequently delivered to Ray Pierson on May 20 in the presence of and with the express consent of Olanow and all the corporate officers."

I put this note in here because at the same time we had developed unfavorable information on the principals of Roosevelt Capital Corporation and therefore I was being extra careful.

Q Were all the corporate officers present when these were delivered to Mr. Pierson?

A Yes, they were. I made it a point because there was a question in my mind as to what parties I should deliver these certificates.

Q Who were the corporate officers present apart from Mr. Olanow and Mr. Pierson?

A Olanow was not an officer, but he was present. Pierson, Stone, and Wallen, I believe, the other officer of the corporation..

Q Was anyone else present when you made this delivery?

A Yes, there were some other people present but I don't recall their names. It was in a large conference room in a law office in downtown Manhattan where Olanow had maintained a temporary office.

Q Was Mr. Crosby present at this transaction?

A No. At least he was not introduced to me if he was present.

Q Was Mr. David Fisher present?

A I don't remember.

Q Do you recall whether a Mr. Glieberman was present?

A The name seems familiar. Is he associated with a New Jersey bank? I believe there was someone associated with a New Jersey bank.

Q Not that I know of.

Was this document, Plaintiff's Exhibit 7

mcr

Mastronardo

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for identification, prepared by you?

A Yes, I had it prepared by one of our secretaries.

Q You have listed here 22 certificates in various share amounts in a column entitled "Name of Owner." That column contains names of individuals.

What does the column "Name of Owner" signify?

A This was the name that appeared on the certificates which we were holding.

Q Were those certificates endorsed?

A I believe they were, although I don't remember it at this stage. Chances are they were.

Q Do you recall whether they were endorsed in blank or endorsed specifically?

A I don't remember how they were endorsed.

This, incidentally, is not a complete list of all the shares. There were some missing shares that were subsequently delivered to Ray Pierson and Samuel Stone for which I do have a receipt in the file.

MR. KULIK: Would you mark these two documents next in order, please?

(Photostat of letter of May 20, 1964,

mdr

Mastronardo

60

addressed to Mr. Patrick J. Mastronardo marked Plaintiff's Exhibit 8 for identification.)

(Photostat of letter dated May 26, 1964, addressed to Mr. Sidney Tolmage marked Plaintiff's Exhibit 9 for identification.)

Q I show you Plaintiff's Exhibits 8 and 9 for identification and ask you if you can identify them. If you can, will you please do so?

A Yes. One was a letter which I received from Tolmage & Harris, attorneys, in which they enclosed the missing certificates that were not delivered at the closing that took place on May 14.

The second is a letter which we wrote to Sidney Tolmage acknowledging receipt of the missing certificates, and also mentioning that we delivered these certificates to Mr. Samuel Stone at 150 Broadway, New York City, against receipt.

These certificates, incidentally, were personally delivered by me to Samuel Stone, and when they were delivered I had the letter which we had received from Tolmage and Harris receipted by Samuel Stone as follows: "In accord with foregoing, received above shares." It was dated May 26.

mdr

Mastronardo

61

Subsequently, since I had made delivery to Stone at the request of Pierson, I had Pierson add his signature to the receipt.

Q Had you requested these certificates of Mr. Tolmage?

A I did not request it. It was requested by the buyers at the closing on May 14, and Mr. Tolmage indicated he would deliver them to us at a subsequent date or make a cash payment for the missing shares.

Q Mr. Tolmage's letter marked as Plaintiff's Exhibit 8 states that the two certificates referred to are endorsed. Do you recall how these were endorsed?

A No, I do not.

MR. KULIK: No further questions.

BY MR. TODEL:

Q Mr. Mastronardo, in your experience in the banking field, have you had any experiences with newly formed small business investment corporations?

A I have met people who formed them, but I do not have any lending experience with these corporations. Essentially, I am a commercial loaning officer. I haven't had occasion to loan

mdr

Mastronardo

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small business investment companies any money.

Any accounts which we do have of this nature would
be routine, non-borrowing accounts, and would
not require too much attention.

(Deposition adjourned at 1:10 p.m.)

Subscribed and sworn to before

me this day of 1965.

246a

CLY 8/1/64
3/26/65 R

FRANKLIN NATIONAL BANK
INTERNATIONAL BANKING DEPARTMENT
HANOVER SQUARE, 130 PEARL STREET
NEW YORK, N. Y. 10013

70
↓
May 14, 1964.

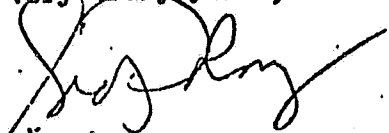
Samuel Stone, Esq.
150 Broadway
New York, N. Y.

Re: Sale of Stock of Roosevelt Capital Corporation

Dear Sir:

I am confirming to you that I have today instructed Mr. William Wallace, Jr., Vice President of the Franklin National Bank at Garden City, N. Y. to release to the Roosevelt Capital Corporation \$187,000, the proceeds of Treasury bills which were on deposit with the Garden City Branch of Franklin National Bank to the credit of the Roosevelt Capital Corporation.

Very truly yours,


Patrick J. MacFarland
Assistant Cashier

FR. 11-2 SIDNEY TOLMAGE
TOLMAGE & HARRIS
20 VESEY STREET
NEW YORK 7, N.Y.

Ref E 2, ref
3/16/65 W

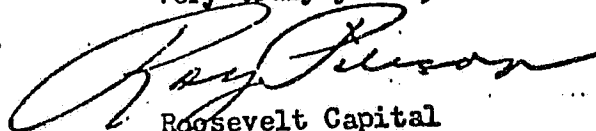
May 14, 1964

Franklin National Bank
130 Pearl Street
New York, New York 10015

Gentlemen:

Please issue your official checks to
order of Sidney Tolmage in the amounts of
\$42,000.00 and \$118,000.00 for delivery
to him.

Very truly yours,



Roosevelt Capital
Corporation

(UNITED Film Works
150 Broadway,
RECD N.Y.C.

Paying

(from Royce) 60 M

Ray Perum 10 M
Ray Perum 42 M
paid 750

TRANSWORLD THEATRICALS, INC

RECD

Coyote Rock Co 60 M

PAID

Coyote to Ltl Claytons 10
" " Contractors Build 44

Contractors Build

Coyote Transworld 44 M

1000 CAPITAL

5/14/64

REC'D

TEARS PILLS	187 M
OFF. CK. FNB	118 M
WFW CK. LAD. PLEAS.	42 M
	<u>\$ 347 M</u>

PAID

OFF CK (SIDNEY TULLMAN)	118 M
OFF CK (SIDNEY TULLMAN)	42 M
CORP CK (UF)	60 M
	<u>\$ 220 M</u>

5/15/64

Corp ck to Transworld	60 M
-----------------------	------

220 M

67

B65

14 11 11
3/10/65J. Ed. F. Wilson World
14-64

02-01-033-0

ReportedW. J. Wilson

Ch. from Ross Cap 60M

to pay Perum 10 M

pay Perum 42 M

(5/15) Cash # 750

52,750

J. Ed. F. Wilson World Inc.

02-01-035-3

Reported

Ch. from Ross Cap 60M

W. J. Wilson

to pay Perum 10 M

Contractor 44 M

54

Bd 4/10/65

Contractor 44M

02-01-045-2

Reported

J. Ed. F. Wilson World 44M

Winnipeg Capital

(02-01-033-0)

5/14/64Deceased

Withdraw

Tree Balls	187M
Off Cr (entire)	118M
United Falm World	42M
	<u>347M</u>

Off cr	118M
off cr	42M
to United Falm (ck)	<u>60M</u>
	220M

11/5/64

to Transworld 60M

280M

227

160

67

I, the undersigned, Secretary of

ROOSEVELT NATIONAL BANK

corporation,

DO HEREBY CERTIFY that at a meeting of the Board of Directors of said corporation, duly held on the 14th day of May, 1964 a quorum being present, the following resolutions were unanimously adopted and recorded in the minute books of said corporation, kept by me, and are in accord with and pursuant to the charter and by-laws of said corporation, and are now in full force and effect, to wit:

RESOLVED, that

1. FRANKLIN NATIONAL BANK, Mineola, N. Y. (hereinafter referred to as Bank) be and hereby is designated as a depository of this corporation, and it is hereby authorized to pay, cash or otherwise honor and charge to this corporation any and all checks, notes, drafts, bills of exchange, acceptances, orders or other instruments for the payment of money or the withdrawal of funds, when signed, made, drawn, accepted or indorsed on behalf or in the name of this corporation by any person then holding any of the following offices or by any of the following named signatories, without counter-signature or co-signature except to the extent indicated as follows:

2. Said Bank is further authorized to pay, cash or otherwise honor and charge to this corporation any such instrument without regard to any notation on any part thereof indicating the effect, purpose or condition of its issuance, delivery, receipt or acceptance, and without regard to any alteration, defacement or erasure of such notation, and said Bank is expressly relieved of any duty on its part to pass upon the regularity of such notation, or to make any inquiry in respect thereof or in respect of any alteration, defacement or erasure thereof. Said Bank may conclusively assume that the date of any such instrument, acceptance or indorsement is the true date of the making, drawing, acceptance or indorsement, as the case may be, completed in each instance by delivery on that date.

3. Said Bank is hereby authorized to pay, cash or otherwise honor and charge to this corporation any such instrument and any instrument payable to or held by this corporation when indorsed as aforesaid, and also to receive same for credit to the account of or in payment from the payee, indorsee or any other holder thereof (including any officer, agent or signatory of this corporation), without limitation of amount and without inquiry as to the circumstances of issue, negotiation or indorsement thereof or as to the disposition of the proceeds thereof, even if drawn, indorsed or payable to cash, bearer or to the individual order of any signing officer, agent or signatory, or tendered in payment of his individual obligation.

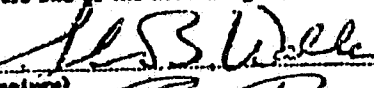


4. Indorsements on behalf of this corporation upon any and all commercial paper of any kind deposited by or on behalf of this corporation with the said Bank for credit or for collection or otherwise, may be made, affixed or imprinted (manually or by stamp impression) by any one of the foregoing officers or signatories or by any other person authorized or purporting to be authorized so to do, and any case the indorsement may bear the name of this corporation alone without specifying the person who made, affixed or imprinted the same or his authority so to do.

5. Any one of the foregoing officers of this corporation is hereby authorized to borrow money and to obtain credit for this corporation from said Bank on such terms as may seem to him advisable, and to deliver notes, drafts, acceptances, agreements and any other obligations of this corporation therefor in form satisfactory to said Bank, signed as designated in paragraph 1 above, and as security therefor to assign, transfer, hypothecate, mortgage, pledge, trustee, withdraw, exchange and substitute any stocks, bonds, securities, bills and accounts receivable, bills of lading, warehouse receipts or any other property of this corporation, with full authority to indorse or guarantee the same in the name of this corporation, to execute and deliver all instruments of assignment, transfer, hypothecation, mortgage, pledge and trust, and to affix the corporate seal. Any one of the officers or any one of the aforementioned signatories of this corporation acting alone is hereby authorized to discount any bills receivable or paper of any kind (negotiable or otherwise) with full authority to indorse the same in the name of this corporation.

6. All the foregoing authorities shall and continue in full force and effect until revoked or modified by written notice actually received by said Bank setting forth a resolution to that effect stated to have been adopted by the Board of Directors of this corporation, and signed by one purporting to be the secretary or an assistant secretary of this corporation and bearing the purported seal of this corporation; and said Bank is hereby authorized at all times to rely upon the last notice, certificate or communication received by it, when so authenticated, as to any resolution of this corporation, or as to the persons who from time to time may be officers or signatories of this corporation, or as to their respective signatures and/or as to any other corporate matters, and Bank shall be harmless in such reliance.

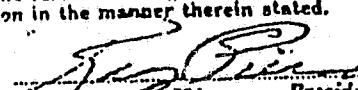
7. That the secretary (or any assistant secretary) of this corporation is hereby authorized to certify and deliver to said Bank copies of these resolutions, and that the signatures of the president (or any vice-president) and the secretary (or any assistant secretary) of this corporation at the foot of the certificate containing these resolutions shall constitute such certificate and resolutions an agreement by this corporation with said Bank with respect to all matters set forth in said certificate and resolutions.

I FURTHER CERTIFY that the persons herein designated as officers of this corporation have been duly elected to and now hold the offices in this corporation set opposite their respective names, and that the following are the authentic, official signatures of the said respective officers and of the named signatories who are not corporate officers, to wit:

Stewart Wallen		President
Name (Print or Type)	(Signature)	
Ray Pierson		Vice-President
Name (Print or Type)	(Signature)	
Samuel Stone		Secretary
Name (Print or Type)	(Signature)	
		Treasurer
Name (Print or Type)	(Signature)	

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation by order of the Board of Directors this 14th day of May, 1964
AFFIX SEAL BELOW

I, the undersigned, President of the corporation above named, do hereby certify that the foregoing certificate is in all respects true and contains a true copy of the resolutions regularly adopted by the Board of Directors of said corporation in the manner therein stated.


Vice - President

*py 5/11/68
3/26/68
B*

253a

ROOSEVELT CAPITAL CORP.
150 BROADWAY
NEW YORK, N. Y.

02-01-032-0

*Roosevelt Capital Corp.
150 Broadway
New York, N.Y.*

02-01-032-

DEPOSITS & CHECKS	CHECKS & ANALYSIS	NO. OF CHECKS	DATE	BALANCE
*160,000.00+	16000 3.20		MAY 15 64 *	100
* 60,000.00-		1	MAY 15 64 *	160,000.00
* 60,000.00-		2	MAY 15 64 *	100,000.00
*187,000.00+CH		2	MAY 18 64 *	40,000.00
* 67,000.00-CC	160,000.00-DH	4	MAY 19 64 *	227,000.00
			MAY 26 64 *	.00

*Unsatisfactory
Requested to
close*

FRANKLIN NATIONAL BANK

ACCOUNT NO.

02/01/032/0

☒ REGULAR CHECKING☐ SPECIAL CHECKING

REQUESTED BY

☒ MAVER☐ PAYEE

CHECK NO.

CHECK DATE

MAILED

PAYABLE TO



FRANKLIN NATIONAL BANK

IN ACCORDANCE WITH BANKING REGULATIONS THE CHECK COVERED BY THIS VOUCHER WILL BE RETAINED BY US. SHOULD YOU REQUIRE THE CHECK PLEASE PRESENT THIS VOUCHER BEARING AN AUTHORIZED SIGNATURE ON FILE IN OUR BANK.

RECEIVED BY

AUTHORIZED SIGNATURE

DEBIT

DEBIT

ACCOUNT

Roosevelt Capital Corp. 02 0102-0

DATE

5/16/64

DESCRIPTION

AMOUNT

To close 9/1 - off ck chge # 7531415
7531416

118 660 -

42 000 -

Official
Checks not charged to this a/c 5/15/64
This will adjust

APPROVED BY

99/17 MAY 63

DO NOT WRITE IN AREA BELOW

TOTAL

160000 -

"0016000000"

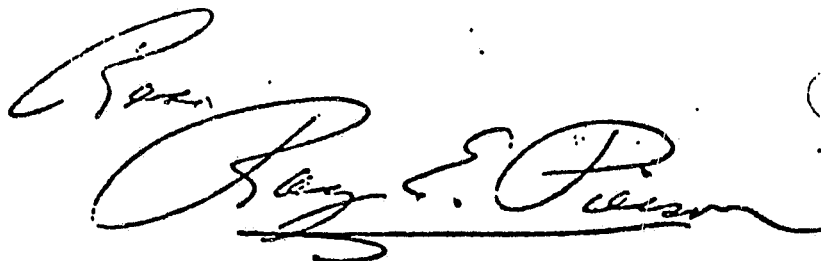
255a

Pg 2/1
3/26/68
MBO

RECEIVED THE FOLLOWING COMMON STOCK CERTIFICATES OF

ROOSEVELT CAMM CORPORATION

<u>Number</u>	<u>Amount of Shares</u>	<u>Name of Corporation</u>
1	1,000	Jules Backman
2	1,000	Isidore Bergner
3	666 7/10	Paul Black
4	666 6/10	Walter Black & Jerry B. Black
5	750	Marcel Deschamps
6	750	Sidney Deschamps
7	500	Alexander Eltman
8	500	S. Delvalle Goldsmi
9	500	Aaron Gross
10	500	Israel Kalish
11	500	Martin Gainsbrugh
12	1,000	Martain Kane
13	500	Howard Katz
15	1,000	Samuel J. Levy
16	500	William Modell
18	500	Hyman Rubinroit
19	1,000	Aaron M. Scharf
20	500	Victor M. Schneid
21	1,000	Charles Shapiro
22	1,000	Sidney Tolmage



256a
LAW OFFICES

TOLMAGE AND HARRIS
20 VESEY STREET
NEW YORK 7, N.Y.

JEANNETTE H. HARRIS
SIDNEY TOLMAGE
ALAN B. WOLFER
IRVING WAXMAN

WORTH 4-1300
AREA CODE 212
CABLE: TOLHARLEX, N. Y.
ISIDORE BERONER
COUNSEL

May 20, 1964

Registered Mail
Return Receipt

Mr. Patrick J. Mastronardo
Assistant Cashier
Franklin National Bank
8 Hanover Square
New York, New York

Re: Roosevelt Capital Corp.

Dear Sir:

Pursuant to my letter to you dated May 14, 1964,
wherein I stated that there was still 1166.7 shares of stock of Roosevelt
Capital Corp. due you, I am herewith enclosing the following:

1. Certificate #14 for 500 shares of Roosevelt
Capital Corp., endorsed by Ira Katz;
2. Certificate #17 for 666-7/10 shares of
Roosevelt Capital Corp., endorsed by Ben Okun.

I do not owe you any further stock.

Would you be kind enough to acknowledge receipt of
this letter and the enclosures.

In accord with foregoing.
Received above shares.

Samuel Stone
ST:EK May 26, 1964
Enclosures

Very truly yours,

TOLMAGE AND HARRIS

Sidney Tolmage

ALAN B. WOLFER

May 26, 1964

Mr. Sidney Tolmage
20 Vesey Street
New York 7, New York

Dear Mr. Tolmage:

We acknowledge receipt of your letter dated May 20,
enclosing two stock certificates of Roosevelt Capital Corp.

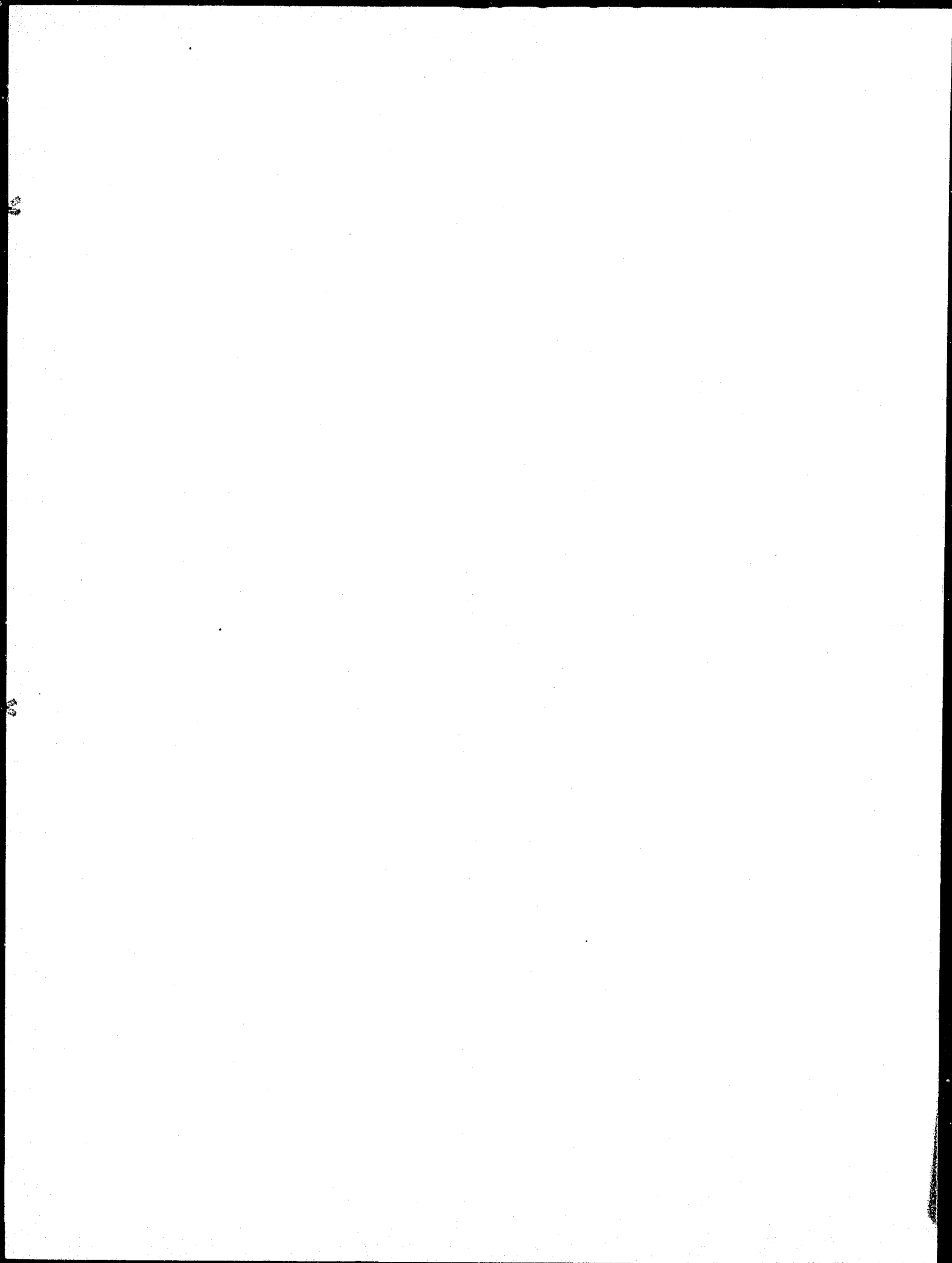
We delivered these certificates to Mr. Samuel Stone,
150 Broadway, New York City, against receipt as evidenced
by the attached photostat.

With kindest regards.

Sincerely,

P.J. Mastronardo
Assistant Cashier

PJM:sg
Encl.



259a

**Transcript of Deposition of Patrick J. Mastronardo,
Taken by Plaintiffs on June 22, 1972 and
Exhibits Annexed**

12

12

12

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA and
5 MORTIMER TODEL, as Receiver
6 of the funds, assets and
property of ROOSEVELT CAPITAL
CORPORATION,

7 Plaintiffs,

8 -against-

67 C 439

9 FRANKLIN NATIONAL BANK,

10 Defendant.

11 -----X

12 225 Cadman Plaza East,
13 Brooklyn, New York

14 June 22, 1972,
15 10:45 o'clock, a.m.

16 DEPOSITION of PATRICK J. MASTRONARDO,
17 taken by the Plaintiffs, held pursuant to
18 notice to take deposition, dated June 6, 1972,
19 at the above place and time, by and before a
20 Notary Public, within and for the State of
21 New York.
22
23
24
25

A P P E A R A N C E S :

2

ROBERT A. MORSE, United States Attorney
for the Eastern District of New York,
Attorney for Plaintiffs,
225 Cadman Plaza East,
Brooklyn, New York
BY: HENRY A. BRACHTL, ESQ., of Counsel.

MORTIMER TOEDEL, ESQ.,
Attorney for Plaintiff, Pro se.
150 East 58th Street,
New York, New York

MESSRS. KAYE, SCHOLER, FIERMAN, HAY'S & HANDLER,
Attorneys for Defendant,
425 Park Avenue,
New York, N. Y.
BY: JULIUS BERMAN, ESQ., of Counsel.

* * *

IT IS HEREBY STIPULATED AND AGREED, by
and between the attorneys for the respective
parties herein, that the sealing, filing and
certification of the within deposition be waived;
that such deposition may be signed and sworn to
before any officer authorized to administer an
oath, with the same force and effect as if
signed and sworn to before the officer before
whom said deposition was taken.

IT IS FURTHER STIPULATED AND AGREED that
the witness appearing herein shall be furnished

with a copy of the within deposition without cost.

* * *

P A T R I C K J. M A S T R O N A R D O, residing
at 3151 High Ridge Road, Stamford, Connecticut,
called as a witness, first being duly sworn, was
examined and testified, as follows:

DIRECT EXAMINATION

BY MR. BRACHTL:

Q Will you please state your name?

A Patrick J. Mastronardo.

Q Mr. Mastronardo, are you appearing today at
this deposition, pursuant to a subpoena?

A Yes.

Q Mr. Mastronardo, state your home address for
the record.

A 3151 High Ridge Road, Stamford, Connecticut
06903.

Q By whom are you presently employed?

A GSF Corporation.

Q Where is your place of business located?

Mastronardo

4

1
2 A In Midland Park, New Jersey.

3 Q Mr. Mastronardo, have you ever served in the
4 United States Army?

5 A Yes, in the Army Air Force.

6 Q Would you please tell me what unit or type of
7 unit you were in?

8 MR. BERMAN: Objection.

9 A I don't recall the unit number.

10 Q Were you in the Army Criminal Investigation
11 Division?

12 A No.

13 Q Have you ever been employed by Irving Trust
14 Company of New York?

15 A Yes, I have been.

16 Q During what period of time were you so
17 employed?

18 A From February, 1947, until the end of December,
19 1963, with the exception of my time in military service.

20 Q What position did you hold at Irving Trust
21 Company, at the time you were employed there?

22 A Assistant Cashier.

23 Q Can you enumerate the positions you held at
24 Irving Trust Company, beginning in February, 1947, and the
25 period of time in which you held each position?

Mastronardo

5

1
2 A My first position was that of a page boy, for
3 approximately six months. After that, I went into the Inter-
4 national Division of the bank and did some minor clerical
5 duties, continued as a clerk in the International Division
6 in various positions of greater responsibility, until 1956,
7 at which time, I entered into the domestic banking division,
8 Executive Training Program and from there I went out to the
9 branch office of the Irving Trust Company at 233 Broadway,
10 in 1959.

11 I was made an Assistant Secretary, I believe,
12 in late 1959 or early 1960. In that position, I solicited
13 new business and engaged in general commercial lending acti-
14 vity. I was a junior officer, at that time.

15 Q Are you distinguishing a junior officer from
16 assistant secretary?

17 A No. Assistant secretary is the lowest grade
18 of officer.

19 Q Mr. Mastronardo, are you a high school
20 graduate?

21 A Yes, I am.

22 Q Have you any formal education beyond high
23 school?

24 A Yes, I do.

25 Q Would you describe that, please?

Mastronardo

6

1
2 A I hold a BS from Fordham University and I hold
3 an LLB from Fordham Law School and I am a member of the bar.

4 Q Are you admitted to the bar in New York?

5 A Yes.

6 Q Did you have a major subject for your under-
7 graduate degree?

8 A Yes, marketing.

9 Q Are you an accountant?

10 A No.

11 Q Have you taken accounting courses at Fordham?

12 A Yes, I took the basic accounting courses. I
13 don't recall what they were.

14 Q Would you describe your function or activities
15 as an assistant secretary at Irving Trust?

16 A Twofold: to go out and solicit new business
17 and to assist the more senior officers of the office in the
18 handling of lending relationships.

19 Q Did you handle lending relationships yourself,
20 in addition to assisting senior officers?

21 A Yes. I would say the smaller, less important
22 relationships.

23 Q In what manner would you solicit new business?

24 A Well, really, both cold solicitation calls.
25 Attempt to find out what businesses were in the area. Get

Mastronardo

7

the appropriate background information on the company, who the officers are and arrange either for an appointment to meet with the financial officer, or the principal officer, depending upon the size of the company.

Q Would you describe the criteria generally which you applied in determining whether or not to establish a lending relationship with a new borrower?

A Well, I guess the basic four "Cs" they teach in school: character of the management, the credit as evidenced by financial statements, the conditions existing in that industry and the capacity of the company's productivity and otherwise, to perform whatever they are doing.

Q Regarding your second "C," or credit, you made reference to financial statements. What sort of information would you require?

A Well, to generalize, I would say you would want certified financial statements as of the fiscal year-end period of the company, preferably for the past three years.

Q Would that include balance sheets; certified balance sheets?

A Yes. Generally, a financial statement consists of a balance sheet as of that time and the profit and loss for the twelve months ending as of that date.

1
2 Q Would you also require pro forma balance
3 sheets or projections?

4 A It depends upon the particular circumstances.
5 I don't say it was required regularly, but I could conceive
6 of circumstances where it would be required.

7 Q Mr. Mastronardo, do you know what a closed
8 corporation is?

9 A A closed corporation?

10 Q Or a closely held corporation?

11 A Yes. Definitely.

12 Q Did you engage in establishing lending rela-
13 tionships while you were at the Irving Trust Company, with
14 what would be described as closely held corporations?

15 A I would say yes. Generally, the smaller ac-
16 counts are privately owned companies.

17 Q Did you ever have an occasion to establish a
18 lending relationship with a corporation which had but one
19 shareholder and officer?

20 A It may well have been. I just don't recall
21 from memory.

22 Q Do you recall if you established lending re-
23 lationships with closely held corporations, which had as
24 few as three shareholders who were also officers?

25 A I would say it's very likely. I would say so.

Mastronardo

Q Did your responsibility end, with regard to the lending relationship, upon the establishment of the lending relationship?

A No. I would say if it was a situation where I might have initiated a lending relationship generally, I would continue to handle that. That would be normal practice.

Q Did you ever have occasions when defaults occurred?

A Yes.

Q What was your function as assistant secretary, with regard to such accounts in the event of a default?

A To take the appropriate steps to correct the default.

Q Would that include initiating or recommending that the bank initiate litigation, for example?

A At that time, I had no such experience, but certainly I would think that would be a logical thing to do. I reported it to superiors and if he did have the expertise to make such a recommendation, I am sure they would have done so.

Q When you or the bank, with you as agent, established lending relationships with closely held corporations, did you require that the shareholders or sole shareholder, as the case may be, co-sign and also be a party?

Mastronardo

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2 A I would think that is a good, sound banking
3 practice to require the stockholder's guarantee the obligation
4 of the corporation.

5 Q Was that, as a matter of practice, your usual
6 course?

7 A That is my opinion. There are some differences
8 of opinion, depending upon the size of the closely owned cor-
9 poration.

10 Q Why do you hold that opinion, or why do you
11 follow that practice?

12 A Well, I --

13 MR. BERMAN: Are you talking about with
14 Irving Trust Company? I'm a little at a loss
15 to understand your question.

16 MR. BRACHTL: We are presently talking
17 about Mr. Mastronardo's experience as a commer-
18 cial loan officer at Irving Trust.

19 THE WITNESS: Let me say from the outset,
20 it is difficult to tell you what I thought then
21 and now and what the differences are.

22 Education is a continuing
23 process and I couldn't tell you my opinions as
24 of 1959, may have been different. I don't know
25 when they may have changed, so I'm speaking

Re: the record

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2 available to the buyers \$187,000 representing the proceeds of
3 the matured Treasury bills which would, in turn, enable us to
4 issue the official checks in question, the \$118,000 and the
5 \$42,000 checks.

6 Q Was this then to be a loan from the selling
7 group to the buying group?

8 A No loan was ever discussed or contemplated.

9 Q You just said that the selling group was to
10 make available \$187,000 to the buying group for the purchase.
11 How were they to make that available?

12 A Everything was to be done simultaneously. This
13 was a practical solution to a business problem, an expedient
14 one that was made on my part with the underlying assumption
15 both parties were acting in good faith and, had that been so,
16 never would have caused a ripple.

17 Q I gather that the resolution that was arrived
18 at was to your knowledge not completed by the parties prior
19 to the closing negotiations?

20 A Not to my knowledge. I had no such knowledge.

21 Q Now, you have indicated that had the parties
22 carried out their obligations in good faith, we would not have
23 a problem today. What was your understanding of the way or
24 the obligations of the respective parties to the transaction
25 as it was contemplated?

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2 A My only assumption was that they were dealing with
3 men of integrity and that they would fulfill their commit-
4 ments.

5 Q What were those commitments, as you understood
6 them?

7 A The commitments? Whatever agreement that they
8 had arrived to among themselves. I had no understanding of
9 the nature of those commitments.

10 Q Without a knowledge of the commitments or the
11 nature of the commitments by the parties to this transaction,
12 on what do you base your assumption that they did not fulfill
13 those obligations in good faith?

14 A Well, by reason of the fact we are here today.
15 Apparently, one of the parties took advantage of the purchase
16 for their personal gain. I don't know that for a fact.

17 Q Do you mean one of the parties took advantage
18 of the transaction on the day of the closing, for their per-
19 sonal gain?

20 A No.

21 Q In what manner do you mean that?

22 A I don't know, but I understand there was some
23 criminal proceedings by your office. I don't know the pre-
24 cise nature of them and you had asked me once to testify at
25 those proceedings, but I was not needed.

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Mastronardo

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2 MR. BERMAN: I still don't follow. Are
3 you asking whether or not they would, or hope or
4 expect them to be liable, or are you asking whether
5 they would feel they are required to pay, or might
6 be required to pay?

7
8 It seems to me you are asking
9 whether or not legally, they are liable for the
10 corporate loan.

11 MR. BRACHTL: Would the Reporter reread
12 the question.

13 (Reporter reads back.)

14 A To generalize, I'd say no. Generally speaking
15 now, unless you have the personal guarantees, you have no
16 personal recourse.

17 Q Is that the reason the bank would, as a matter
18 of practice, require co-signatories or guarantees?

19 A Again, lending is not an exact science. The
20 poorest lending officer is the fellow who read a book of
21 rules and only follows them. A lending officer -- There is
22 no single rule.. It depends upon the facts and circumstances
23 of the case; otherwise, you can get a bookkeeper to become
24 a lending officer.

25 Q Would you say then that subject to exceptions
in the judgment of a lending officer, that you would generally

1
2 require guarantees?

3 A I would generally like to have such a guarantee.
4 It would be my preference if I felt I had the bargaining
5 power to obtain such a guarantee, I would get it and this is
6 a matter of judgment.

7 Q Were your activities as an assistant secretary
8 of Irving Trust Company solely confined to the two functions
9 you described, that is, soliciting new lending customers and
10 preparing or establishing lending relationships?

11 A Yes.

12 MR. BERMAN: The witness has already
13 testified once, they were in the office he
14 handled once. You mean besides them?

15 MR. BRACHTL: Let me restate that.

16 Q Did you have functions other than soliciting
17 new business, establishing lending relationships and servicing
18 those so-established lending relationships?

19 A My view of a lending officer is he should know
20 as much about what his bank is doing, but he should become
21 acquainted with trust functions, international division,
22 and others to be -- A complete bank officer requires you to
23 at least have a desire to know as much as possible so, it
24 is my function to know as much as possible and to use that
25 knowledge for the benefit of the bank.

Mastronardo

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3 Q As a commercial loan officer at the Irving
4 Trust Company, did you ever have an instance of a default
5 on a loan which you were servicing, by a closely held cor-
6 poration?

7 A Yes, I did.

8 Q Did you have more than one such incident?

9 A I can only now recall one.

10 Q Would you describe the circumstances, without
11 necessarily naming the parties involved; but, if you will,
12 please describe the circumstances of that transaction?

13 A Simply stated, the company was an importer of
14 food products. He was unable to sell his inventory and re-
15 pay the loan outstanding. I think he had too much overhead,
16 not sufficient marketing force and wasn't able to meet his
17 note when it was due. It was a modest amount. I don't re-
18 call, and ultimately, I referred that, as I said before, to
19 my superior and a more seasoned officer took over from that
20 point.

21 Q As a commercial loan officer, and referring
22 specifically to your practice as a commercial loan officer
23 of the Irving Trust Company, would you have regarded the
24 application of corporate assets to a personal obligation of
25 one of the shareholders of such a closely held corporation,
as an impairment of capital?

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2 A I think, on its face, it must be regarded as
3 such. Yes.

4 Q During your tenure at Irving Trust Company,
5 did you have occasion to transact business with, or on be-
6 half of, or by Sidney Tolmadge?

7 A No.

8 Q Do you know a Sidney Tolmadge?

9 A I recall his name from the events that took
10 place while I was with Franklin National Bank, in May, 1964.

11 Q Have you ever met Mr. Tolmadge?

12 A I believe I have. I am not certain.

13 Q What did you do, Mr. Mastronardo, after you
14 terminated your employment with Irving Trust Company?

15 A I joined Franklin National Bank.

16 Q In what capacity?

17 A As assistant cashier, a capacity corresponding
18 to that which I held at Irving Trust Company.

19 Q Does the Franklin National Bank have more than
20 one location?

21 A Yes.

22 Q Where did you initially perform your functions?

23 A At our Branch Loan Administration in Roosevelt
24 Field, Long Island. It was an indoctrination period.

25 Q How long were you at the Roosevelt Field office?

1
2 A Approximately three months.

3 Q What was the nature of the indoctrination
4 period or program to which you have referred?

5 A The Long Island branch offices would refer to
6 us memoranda of loans that they had made to their customers.
7 We would review the basic information provided and express
8 our opinions as to the soundness of the loan.

9 Q To whom would you express your opinion?

10 A To the more seasoned people in the department,
11 at that time.

12 Q When that indoctrination period or program was
13 completed or ended --

14 A Yes.

15 Q (Continuing) -- would you describe what you
16 then did as an employee of Franklin National Bank?

17 A I was transferred to the office to be opened
18 at 130 Pearl Street in April of 1964. The official opening
19 took place in May.

20 Q Do you recall the date of your transfer to
21 that branch?

22 A No, I do not recall the precise date, but I
23 believe it was in the month of April.

24 Q Do you remember if it was in early April or
25 late April?

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2 A I really would have to guess. I would say in
3 the middle to compromise.

4 Q That branch was not open, at the time you
5 transferred there?

6 A Not officially open. It did transact some
7 business preliminary to its opening.

8 Q Was it open to the general public?

9 A I would say not officially.

10 Q What function did you perform at the outset,
11 at the branch located at 130 Pearl Street, Manhattan?

12 A To prepare for the opening of the branch, to
13 set up files and systems and to generally do all the things
14 that are required to set up a new operation.

15 We did attempt to prepare lists of companies
16 to be solicited for business at that time, and to prepare
17 whatever is done for receptions for the public.

18 Q Was there a cashier as opposed to an assistant
19 cashier, at that time?

20 A There was only one cashier in the bank. I
21 think the title "assistant cashier" does not bear any rela-
22 tionship to cashier.

23 Q Would you please explain that?

24 A An assistant cashier is merely the junior
25 lending officer. You can call him the assistant secretary

Mastronardo

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2 or junior lending officer. I don't know -- The next logical
3 step would not be promotion to cashier. There is only one
4 cashier in the bank. I don't know what specific duties he
5 has, if any, or just a nominal title. The next step is assist-
6 ant vice-president.

7 Q Were there other assistant cashiers at the
8 branch to which you were assigned?

9 A I don't remember now. There was quite a bit of
10 turn-over. They might have.

11 Q Did your responsibilities during this initial
12 set-up period, include responsibility for establishing the
13 bookkeeping operations of the bank?

14 A No. I was not engaged in the operation of the
15 bank.

16 Q How do you define the "operations area"?

17 A We brought in the accounts. By "we," I mean
18 the platform or commercial lending officers. We got the cus-
19 tomers to establish the account. If a loan was to be made, we
20 got him to sign the documents and all of the other work per-
21 formed is done by the operations; that is, taking in money,
22 checks, bookkeeping, all the other functions to service the
23 customer.

24 Q When was the first loan transaction handled by
25 you as an assistant cashier, at the new branch?

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2 A I would say most likely it took place after the
3 opening of the branch, which was on May 13th, if my recollec-
4 tion is correct. I don't believe we had any loans for some
5 time, that were originated at the branch. It was a purely
6 start-up operation.

7 Q Do you recall when loans commenced?

8 A I would say again, speculation on my part, in
9 May of 1964, or June.

10 Q Are there different ways to fund a loan; that
11 is to say, by way of clarification, would you distinguish be-
12 tween issuing a line of credit, for example, and issuing
13 cash as the funding of a loan?

14 MR. BERLIN: Now, you are not focussing on
15 any individual bank? You are asking the witness
16 the question as a former banker?

17 MR. BRACHTL: No. I am asking him as
18 assistant cashier at a branch bank.

19 Q What were the ways in which you would fund a
20 loan, and if I have used incorrect terminology, please cor-
21 rect me?

22 A I don't think the word "fund" is correct, but
23 I think I understand what you intended. The general way to
24 get the money to the customer, would be to credit his account
25 with the proceeds of the loan.

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2 Q That would contemplate having a checking ac-
3 count relationship with your bank; is that correct?

4 A Yes. Banks are not interested in one-shot
5 deals. They envisage long-term, growing relationships and
6 we do not make loans, as a general rule, just to have loans
7 on the books.

8 Q If you had a loan transaction, and again we
9 are speaking as an assistant cashier at Franklin National
10 Bank's Hanover Square branch, which was a one-shot deal,
11 is there or was there a usual practice for making or for
12 getting the money to the customer?

13 MR. BERMAN: Objection to the question;
14 form. Shouldn't you first ask whether he did
15 have a transaction and then work into the procedure?

16 MR. BRACHTL: I will ask that question.

17 Q While you were assistant cashier at the Han-
18 over Square branch of the Franklin National Bank, --

19 A Yes.

20 Q (Continuing) -- did you ever have a one-shot
21 deal loan?

22 A Not to my knowledge.

23 Q Do you know if the bank, or that branch of
24 the bank, had such one-shot deal loans?

25 A I would say so.

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2 Q During your tenure as assistant cashier at the
3 Hanover Square branch, did you, in lending relationships, get
4 the money to the customer in ways other than crediting their
5 accounts?

6 A I want to preface my answer by saying education
7 is a continuing process. I cannot say what I believed in May,
8 1964, and what I believe today.

9 Q Let me call to your attention, I have asked
10 whether you did engage getting money to the customer in a way
11 other than crediting his account.

12 A I would say no.

13 Q Can you please tell me the papers or the re-
14 quired tickets which you would prepare to properly record a
15 loan transaction?

16 A First of all, you would have the back-up data
17 that is, on which you made a judgment on which to extend a
18 loan, in the first place. Assuming you have that, you would
19 obtain a note signed by the borrower indicating the amount
20 and tenure of the obligation and, if it were a secured loan,
21 you would obtain the appropriate hypothecation forms and UCC
22 filings, if applicable.

23 Q What would be appropriate hypothecation forms?

24 A Well, a form that is called "hypothecation,"
25 in which the person pledging the security consents to this.

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2 Q Did the bank have one standard form which you
3 used in all secured transactions?

4 A I don't believe so. I couldn't say, for sure.
5 I don't think so.

6 Q Did the bank have predated forms which were
7 used for hypothecation?

8 A Yes. We had a secured form of note and now it
9 comes to me, I believe, a collateral note agreement form.

10 Q As a lending officer at the Hanover Square
11 branch, did you ever make a loan using other documents or,
12 that is to say, a note or collateral note form other than
13 those provided by your bank?

14 MR. BERMAN: "Provided by the bank" would
15 include typed up by lawyers, I assume you mean?

16 MR. BRACHTL: Well --

17 A Yes, including those prepared by our counsel.

18 Q Did you use forms of agreement prepared by
19 your prospective borrowers?

20 A No.

21 MR. BERMAN: I take it you are not disting-
22 uishing between your preparation and the initial
23 draft of any agreement which is negotiated?

24 MR. BRACHTL: That is correct. I am
25 talking about the instrument or what becomes the

instrument on a particular loan. I think the question has been answered!

MR. BERMAN: Yes.

Q In what conditions would UCC forms be used?

A Wherever it is required to perfect our security interest, that is governed by the applicable law.

Q Now, if the loan agreement was executed and you, therefore, committed the bank to a loan, in what manner would you reflect the commitment of the bank and the payment of the loan amount to the borrower?

A Well, if there were -- if there was a similar loan agreement, that would evidence the commitment of the bank. It would be so expressed. The only other way, in my opinion, is when you actually extended the money to the customer.

Q You mean without an instrument?

A You always extend a loan with an instrument. There has to be a date.

Q For internal bookkeeping purposes, did you prepare any records of loan transactions in which you were engaged?

A I personally did not, but our loan department did. They kept a record of the outstanding loan, the names of the borrowers, interest rate, maturity date, et cetera.

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2 Q Earlier you stated the usual practice would be
3 that is, the usual practice in getting the money to the cus-
4 tomer, would be by means of crediting his account. Now, in
5 a mechanical or bookkeeping sense, would that be accomplished
6 by you?

7 A A credit advice would be prepared in the norm-
8 al course of events, by the loan department, indicating the
9 amount of the loan proceeds credited to the account.

10 Q How would the loan department be advised of
11 the bank's obligation to make such a credit?

12 A They would be given the note, everything --
13 the loan and the supporting documents, if any. They would
14 be told the rate of interest, if it were not noted on the
15 note, the maturity date, of course, would be stated and
16 they would take the amount to be credited to the customer's
17 account, depending upon whether it is discounted note or
18 otherwise; a demand note.

19 Q Would each customer's account be evidenced or
20 reflected in a separate ledger maintained by the bank?

21 A Yes. We don't comingle funds of customers.

22 Q In the event of a loan in which the customer
23 is to get the money by way of a credit to his account, who
24 would put the appropriate credit to the ledger for the ac-
25 count?

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2 A I would give the bookkeeping department the
3 information and they would probably handle that.

4 Q What document or instruction, if any, would
5 they require to make such an entry?

6 A The officer approving the note would have to
7 initial it, and that would be the authority of the loan de-
8 partment to prepare the appropriate credit entries and see
9 to it the amount was credited to the customer's account.

10 Q So, the loan department would issue the in-
11 structions to the individual or the group responsible for
12 posting it into the customer's account?

13 A The loan department would prepare the approp-
14 riate entries, the credit to the account, in this case, and
15 the bookkeeping department would physically post the credit
16 advice to the customer's account.

17 Q When you say that the loan department would
18 prepare the particular entries, in what manner would they
19 prepare them, on a slip of paper?

20 A There would be an advice placed in the type-
21 writer and completed by a typist.

22 Q Is their advice a printed form to be completed?

23 A Generally, yes. Yes.

24 Q Is that printed form one which has more than
25 one part; that is to say, is it a printed form which has

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1 duplicate parts?

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3 A Yes. I would say it should be that one copy
4 is retained by the bank and the other goes to the customer,
5 who would receive notice of the credit taking place.

6 Q Were there any other copies of such advices
7 that would normally be prepared in the course of establishing
8 a loan?

9 A I don't think so. Those are the basic advices.
10 It is possible the bank may now prepare other advices for
11 other bookkeeping records. I don't know.

12 Q I am asking you, With regard to your experien-
13 ce as a commercial loan officer.

14 I would say generally not. That is the basic
15 requirement, an advice which would be credited to the cus-
16 tomer's account and an advice that would be mailed to the
17 customer, giving him notice of that.

18 Incidentally, this is prior to computerization
19 which, I understand, is now taking place in Franklin Nation-
20 al Bank, and may have taken place in other banks.

21 Q Was the bank's bookkeeping system one that
22 you would describe as a double entry book^{keeping} system?

23 A Yes.

24 Q Does that mean for every credit entry in the
25 books of the bank, there is an offsetting debit?

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Q Or a debit of equal amount?

A Yes.

Q In the case of a loan transaction in which a credit advice has been prepared and posted to the account of a customer --

A Yes.

Q (Continuing) -- indicating the introduction of funds into the customer's account --

A Right.

Q (Continuing) -- what would be the debit entry, which would counter that credit entry?

A The note, itself, evidencing an increase in loans due to the bank.

Q In addition to the note as evidence of the loan, would the bank prepare a debit advice?

A No. The note, if my knowledge is accurate, would be the debit advice.

Q Would the loan debit, as evidenced by the note, be posted to an account or a ledger?

A Yes, it would.

Q And what would that be; what account or ledger?

A I don't know the precise name of it. I never had direct experience, but it would be a ledger on which

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1 would be reflected the total loans due the bank.

2 I qualify all my answers to the extent that I
3 haven't had direct experience, but this is my understanding.

4 Q Were separate books of account maintained by
5 the plaintiff as opposed to the Franklin National Bank, as
6 a whole?
7

8 A Well, to a limited extent, yes. We knew what
9 our deposits, loans, were. In that respect, yes. An attempt
10 also was made daily to have separate budgets for each branch.

11 Q At that time, you have indicated there was an
12 attempt to know the loans; for example, how would you ascer-
13 tain that? That is to say, at that time, how did you ascer-
14 tain the loans outstanding at the branch?

15 A Simply by walking over to the loan department
16 and asking the chief loan clerk what the outstanding loans
17 were and they were either in the aggregate, or for an indi-
18 vidual borrower.

19 Q Did the Hanover Square branch maintain a daily
20 statement of condition?

21 A At that time, I couldn't say. I don't know.
22 It may well be.

23 MR. BERMAN: Now, you are talking about
24 the entire tenure he was there or the first
25 couple of days or weeks?

Mastronardo

MR. BRACHTEL: The entire to Mrs.

THE WITNESS: Again, I'm sure if we desired, we could compile that information on any given date. Again, in relation to total deposits and total loans, that information was always available on a daily basis.

Q Was there a bookkeeping department that was specifically assigned to, and responsible for, the maintenance of the books and records of the Hanover Square branch?

A I don't know what label it had, but there were people assigned to maintain the books and records of the branch.

During your tenure, was it the practice of the bank to prove out, or balance all accounts, at the end of each day?

A Yes. I believe that always was the case.

Who performed that function?

A The loan department and then I suppose the head teller and the other clerical staff.

Q When you say the "loan department," did you regard yourself as a commercial loan officer and assistant cashier as part of the loan department?

A No. The loan department actually effects what we approve.

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2 Q Now, in the event of a loan in which the money
3 is given to the customer by crediting his account and a debit
4 is posted to the loan account at the bank, would there be
5 any other entries, credit or debit entries, to other accounts
6 which would also be necessary?

7 A Not to my knowledge, unless you had some pe-
8 culiar set of circumstances.

9 Q Would there be a credit, for example, to a
10 cash account or cash reserve?

11 A Well, a customer can call his account by what-
12 ever name he wants. It is still a demand deposit account.
13 Regardless how he wants to designate, it doesn't change the
14 character of it, so it is all the same.

15 Q Did the loan account, by whatever name it is
16 called, to which the note was debited, regard it has a cash
17 account or would it be necessary to have an additional debit
18 or credit to another account, in the event that, or upon the
19 occasion of, the borrower's removal of the money, which
20 would be debited to his account?

21 A The only way he could remove the money was to
22 issue a check or instruct the bank to transfer the funds.

23 Q So that the posting of a loan to the books of
24 the bank would be accomplished by two entries and not, for
25 example, by four?

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2 A That is right. As you brought out earlier,
3 it's a double entry system: yes, the debit and credit.

4 Q Is there a distinction, Mr. Mastronardo, between
5 bank checks and cashier's checks?

6 A No, just a matter of name. They are the same.

7 Q What bookkeeping entries would accompany the
8 issuance of cashier's checks?

9 A There would be a credit to an account called
10 "official checks," it being a liability of the bank, being
11 increased by the credit and the corresponding debit to what-
12 ever source of funds, by the issuance of that check.

13 Q In what manner would the accounting or posting,
14 individually or department, be instructed to credit the of-
15 ficial checks account and to debit the source account?

16 A In my experience, the official check form al-
17 ways provided for a credit entry being a duplicate of the
18 check. The liability account of the official checks by
19 credit would thereby be increased by the amount of that
20 check. I am not a bookkeeper or accountant, but this is my
21 understanding.

22 Q Now, when you say there would be a duplicate
23 of the check, would that be an equivalent of the credit
24 advice?

25 A Yes.

Mr. Cronardo

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2 Q There had to be a third piece of paper in ad-
3 dition to the check and your credit advice which would be,
4 in effect, a debit advice?

5 A No. There would not be a debit advice as part
6 of the official check form. Depending upon the account to be
7 debited, the appropriate advice would be prepared.

8 Q Were there different kinds of debit advice
9 forms used in the issuance of cashier's checks?

10 A No. I think, at that time, Franklin had a
11 simple debit form that was used for any one of a number of
12 purposes.

13 Q If a customer of the bank were to purchase a
14 cashier's check by the tender of cash with the request for a
15 cashier's check equivalent to the cash and, additionally, was
16 there to pay a fee, what sort of debit ticket would be pre-
17 pared, if any?

18 A Well, banks today sell remittance checks, which
19 are another form of official checks, - money order checks.
20 I would think the cash, itself, the cash account, if there
21 be one, would be the offset to credit of official checks.

22 Q Who would be responsible for preparing the
23 official check, the credit advice duplicate and the approp-
24 riate debit advice in a transaction such as that we have
25 just described?

Mr. Brachtl

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MR. NEWMAN: Can I see right in that and when you say "preparing," do you mean the typing or writing?

MR. BRACHTL: Yes.

A Someone who had authority to do so. The bank designates somebody to do acts, an authorized individual.

Q At the Hanover Square branch, which individuals were authorized to prepare these forms for the issuance of cashier's checks?

A I want to distinguish who was authorized to approve the form from who did the work, physically, in preparing it. Frequently, a secretary was used to type the form. I think, at the very beginning, some of them were even handwritten.

Q Who would have the authority to approve such checks?

A Well, it depends upon who the bank wants to designate. There are certain people in the branch, John Doe or Mary Smith, or a commercial lending officer.

Q At the time of the opening of the Hanover Square branch, who had such authority?

A I would say the officers who were assigned to that branch, and other than that, I would say probably the chief clerk or chief operations officer.

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Q.: Are you distinguishing between the source of the cashier's check; in other words, as to based upon a loan, whether or not there is a limit of authority of any individual lending officer of the amount of the loan from which the check would be issued, or who has physically the power to authorize the check, per se?

MR. BRACHTL: Mr. Mastronardo distinguished between those who would prepare the appropriate replying memoranda and those who had authority to authorize the issuance.

MR. BEIRMAN: I understand that. If the cashier's check is the result of a loan, your question may be interpreted as who has authority to create the loan.

MR. BRACHTL: I have not asked that question.

Q. Did you have authority, Mr. Mastronardo, to authorize the issuance of cashier's checks?

A. Yes.

Q. Did you ever exercise that authority?

A. Certainly.

Q. Did you ever have occasion to prepare the underlying memoranda, including the check itself, and the accompanying debit advice and credit advice?

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2 A I am certain, as a matter of experience, I have
3 done it myself.

4 MR. BERMAN: (To the witness) Meaning at
5 times, or always?

6 THE WITNESS: No. Just where it was expedient.
7 If I was in a hurry to get something done, and I
8 didn't want to wait to telephone my secretary, I
9 might have done it myself. I couldn't answer that
10 generally. My concern always is to get the job done
11 the quickest way possible, to best service the
12 customer.

13 Q Do you recall the date of official opening of
14 the Newover Square branch?

15 A I believe it was May 18, 1964. Eight years
16 ago.

17 Q Mr. Mastronardo, have you been deposed; that
18 is, has your testimony been taken under oath, in connection
19 with an action, "United States of American, against Roosevelt
20 Capital Corporation and Ray Pierson," on March 26, 1965?

21 A I believe that is so.

22 Q Mr. Mastronardo, I am handing you what pur-
23 ports to be a Xerox copy of a deposition, your deposition,
24 taken on March 26, 1965, in connection with that transaction
25 and I show you page 62 of that copy and ask if the photocopy

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Mastronardo

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1 of the last page shows your signature or what appears to be
2 a copy of your signature?
3

4 A Yes, it does.

5 Q I am now showing you page 6 of the transcrip-
6 tion of that deposition and I refer you to the question:

7 "Q Was a date set for the closing of the purchase" and the
8 answer stated there: "Yes, as far as I know the closing
9 took place the following morning at approximately ten
10 o'clock."

11 The subsequent question: "Q Ten o'clock,
12 May 14, 1964?" The answer: "Yes."

13 Does that refresh your recollection as to the
14 opening date of the bank?

15 MR. BERMAN: Objection. Implicit in that
16 question, is the fact there is something inconsis-
17 tent with the testimony today. I think there is not.

18 You asked the witness when the
19 doors were open. There is nothing implicit, in any
20 way, that that answer is not valid. If you want to
21 ask him what he was doing May 14th, be my guest.

22 MR. BRACHTL: I asked if it refreshes his
23 recollection.

24 MR. BERMAN: I don't see anything about re-
25 freshing his recollection. He has already given you

Mastronardo

10'

the official date.

Q Does that refresh your recollection as to the official date of opening of the Hanover Square branch?

A It doesn't change my recollection.

Q Mr. Mastronardo, was the bank open for business on May 14, 1964?

A It transacted business on May 14, 1964.

Q Were you present on that date?

A I believe so.

Q Were you present at a meeting on May 14, 1964, at the Hanover Square branch, with Ray Pierson?

A Yes.

Q Was Samuel Stone also at that meeting?

A I believe so.

Q Was S. Lonnie Olanow?

A Yes.

Q Were you present at that meeting in your capacity as an officer of the bank?

A Yes.

Q What was the purpose of that meeting?

A To enable an existing customer to sell one of its assets, or companies to another group.

Q Who was the existing customer?

A A company called Roosevelt Capital Corporation.

1
2 or Company. I'm not sure of the exact title.

3 Q What was, or who were, the other group?

4 A I don't recall their specific names. I believe
5 you mentioned the attorney for the selling group, - Tolmadge,
6 I believe.

7 Q Was that Sidney Tolmadge?

8 A Yes.

9 Q Was he present at the meeting, as well?

10 A Yes, I believe so.

11 Q During that meeting, did you, on behalf of the
12 bank, deliver to Mr. Tolmadge, a check in the sum of
13 \$118,000, payable to his order?

14 A I don't recall physically who the check was
15 delivered to or -- but I do recall checks were exchanged.

16 Q Did the bank issue a check in the sum of
17 \$118,000, payable to the order of Sidney Tolmadge, on that
18 date?

19 A I believe so. I recall the amount of \$118,000
20 and, I believe, it was payable to him, but I don't recall
21 the name of the payee. This was all brought out in that
22 prior deposition I gave in 1965.

23 MR. BRACHTEL: Please mark this check,
24 dated May 14, 1964, in amount of \$118,000
25 "Plaintiffs' Exhibit 1 for Identification."

Mastronardo

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(Paper, above described, marked "Plaintiffs' Exhibit 1 for Identification," as of this date.)

Q Mr. Mastronardo, I am handing you Plaintiffs' Exhibit 1 for Identification, which purports to be a Xerox copy of the front and back sides of a check, in the amount of \$118,000, payable to Mr. Sidney Tolmadge. Is that a copy of a check issued on May 14, 1964?

A Yes, it appears so.

Q Do you recognize that check?

A I recognize my signature there. Yes, I do recall that check.

Q Was that check delivered to Mr. Tolmadge at the bank on May 14, 1964?

MR. BERMAN: Objection. You asked the witness whether it was delivered physically, and he answered he does not recall whether it was handed or put on the desk or whatever, and you are going into that same thing again.

Q Did you deliver that check to someone in the meeting you described that was held that day at the bank?

A Yes. I did not retain it. I delivered it to somebody.

Q To whom did you deliver the check?

A I don't recall specifically the name of the

1 person, but I would assume the payee ultimately received the
2 check since I see the endorsement on the side (indicating).
3

4 Q Were you present when he endorsed that check?

5 A I don't recall -- As I brought out, I was not
6 present at the entire meeting and came in and out several
7 times.

8 Q Was the check endorsed by Mr. Tolmadge?

9 A Presumably there is an endorsement purported
10 to be his signature.

11 Q Was there a special endorsement?

12 A The endorsement reads: "Pay to the order of
13 the Roosevelt Capital Corporation".

14 Was that check redelivered to you at the Han-
15 over Square branch on May 14, 1964?

16 I don't recall every item that was processed
17 that day. I do recall I made extensive notes of what took
18 place at that time and I gave very detailed testimony as to
19 the precise nature of each item that went through the account
20 that day and I would say that is absolutely correct today,
21 as I did then.

22 MR. BRACHTEL: Please mark two sheets
23 of paper, "Plaintiffs' Exhibit 2 for Identification."

24 (Papers, above described, marked
25 "Plaintiffs' Exhibit 2 for Identification," as of

1
2 this date.)

3 MR. BRACHTL: Please mark two sheets of
4 paper, dated May 14, 1964, "Plaintiffs' Exhibit
5 3 for Identification."

6 (Papers, above described, marked
7 "Plaintiffs' Exhibit 3 for Identification," as
8 of this date.)

9 Q Mr. Mastronardo, I have handed to you Plain-
10 tiffs' Exhibit 2 for Identification, which purports to be
11 two pages, copies of apparently handwritten notes and I ask
12 you if these copies or those are copies of pages of notes
13 made by you?

14 A Yes, they are in my handwriting.

15 I hand to you Plaintiffs' Exhibit 3 for Iden-
16 tification, which also consists of two pages of copies of
17 apparently handwritten notes, and ask if those appear to be
18 copies of notes made by you?

19 A Yes.

20 Q Are these the notes to which you have referred?

21 A Yes.

22 Q Do these notes refresh your recollection as
23 to whether the check for \$118,000 was tendered to the bank,
24 or redelivered to the bank on May 14, 1964?

25 A It would appear from these notes that the

1
2 check for \$118,000 was credited to the account of Roosevelt
3 Capital as indicated by the endorsement that Mr. Tolmadge
4 presumably made on May 14th.

5 Q On May 14, 1964, did the Hanover Square
6 branch also issue a check in the sum of \$42,000, payable to
7 Sidney Tolmadge?

8 A I seem to recall that happened. Yes, I believe
9 so from my memory, but, again, if we would go back to the
10 original testimony I gave, that would bear it out.

11 MR. BRACHTL: Will the Reporter please
12 mark Xerox copy of check dated May 14, 1964,
13 both sides, "Plaintiffs' Exhibit 4 for Identification."

14 (Paper, above described, marked
15 Plaintiffs' Exhibit 4 for Identification," as
16 of this date.)

17 Q Mr. Mastronardo, I have handed to you Plain-
18 tiffs' Exhibit 4 for Identification, which purports to be a
19 Xerox copy of front and back of a Franklin National Bank
20 check, in the amount of \$42,000, payable to Sidney Tolmadge.

21 Do you recall that as a check issued on the
22 date shown on its face by the bank to Mr. Tolmadge?

23 A Yes, it is.

24 Q Did you or any other representative of the
25 bank deliver that check to Mr. Tolmadge on May 14, 1964?

EXHIBIT 100

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2 A As I mentioned before, we found that check
3 and it ultimately ended up in the hands of Mr. Tolmadge.
4 Whether he received it directly from me or not, I do not
5 recall.

6 Q At the meeting on May 14th at the Hanover
7 Square branch, did Mr. Tolmadge turn over to Mr. Pierson
8 shares or certificates representing shares of Roosevelt
9 Capital Corporation?

10 A Yes, I believe so.

11 Q Were these shares endorsed?

12 A I don't recall.

13 Q Did these shares represent approximately
14 14,500 shares of Roosevelt Capital Corporation stock?

15 A I don't recall the number of shares, but I do
16 recall it represented virtually all of the shares of the
17 company.

18 Q Did Mr. Pierson tender those shares or the
19 certificates representing those shares, to you?

20 A Yes, he did.

21 Q Did Mr. Tolmadge tender to you a letter which
22 he had written to a Mr. Wallace?

23 A I believe so, but I don't specifically recall
24 who the letter was addressed to.

25 MR. BRACHTL: Please mark this letter

1
2 dated May 14, 1964 "Plaintiffs' Exhibit 5 for
3 Identification."

4 (Paper, above described, marked
5 "Plaintiffs' Exhibit 5 for Identification,"
6 as of this date.)

7 MR. BERMAN: Will the Reporter please
8 read back the last question and answer.

9 (Reporter reads back.)

10 Q Mr. Mastronardo, I am handing you Plaintiffs'
11 Exhibit 5 for Identification, which purports to be a Xerox
12 copy of a letter bearing the signature of Sidney Tolmadge,
13 addressed to Samuel Stone, dated May 14, 1964. Do you re-
14 call that letter?

15 A Yes, I do.

16 Q Was that letter delivered to you at the Han-
17 over Square branch on May 14, 1964?

18 A Either the original of this letter or a copy
19 of it. I don't recall precisely.

20 MR. BERMAN: Were you referring to this
21 letter in your prior question, because you have
22 talked about a letter to Mr. Wallace?

23 MR. BRACHTEL: That's right; and this
24 letter, as you can see, is addressed to Samuel
25 Stone.

1
2 MR. BRACHTL: Will the Reporter please
3 mark this letter dated May 14, 1964 "Plaintiffs'
4 Exhibit 6 for Identification."

5 (Paper, above described, marked "Plaintiffs'
6 Exhibit 6 for Identification," as of this date.)

7 Q Mr. Mastronardo, I have handed you Plaintiffs'
8 Exhibit 6 for Identification, which purports to be a letter
9 to the Franklin National Bank, without signature, but bear-
10 ing the name of Sidney Tolmadge, dated May 14, 1964.

11 I note that that letter, or a copy of that
12 letter, appears to have been previously marked as an exhibit
13 in the lower right-hand corner. Other than the notations
14 there, do you recall this letter?

15 A I recognize my signature. I don't recall the
16 specific content of this letter, but I do recognize my sig-
17 nature.

18 MR. BERMAN: Referring to the lower
19 left-hand corner, Mr. Mastronardo?

20 THE WITNESS: Yes.

21 Q Why does it bear your signature?

22 A It appears to say: "Accepted, Franklin Nat-
23 ional Bank, by" myself in the lower left-hand corner and I
24 would interpret this to mean I agreed, or accepted the word
25 of Mr. Tolmadge to do what he said he would do, namely: to

1
2 deliver additional shares to us.

3 Q Mr. Mastrorardo, this letter states: "I have
4 received from you today two checks total \$160,000 pursuant to
5 an agreement dated April 28, 1964, between S. Lonnie Olanow
6 and myself."

7 Does this refresh your recollection as to
8 whether you or an agent of the bank delivered to Mr. Tolmadge
9 two checks totalling \$160,000?

10 A Again, as I brought out before, I could not
11 say whether I physically directed and delivered the checks
12 to Mr. Tolmadge. I could say with certainty that I actually
13 received those checks on that date, but whether they came
14 from me or by some other route at that time in that place,
15 I could not say with certainty.

16 Q The words I have quoted refer to an "agreement
17 dated April 28, 1964 between S. Lonnie Olanow and myself."

18 What was that agreement?

19 I haven't the vaguest idea.

20 Q Do you know if that was an agreement in
21 writing?

22 A I haven't any idea.

23 Q Did you ever see such an agreement?

24 A Not to my knowledge or recollection.

25 Q The following sentence states: "I still owe

1
2 to you 1,156.7 shares of stock of Roosevelt Capital Corpora-
3 tion."

4 A Yes.

5 Q At the time that letter was written, was that
6 an accurate statement?

7 A I would say not literally accurate. I think
8 the "you" is not literally correct. He did not owe me any-
9 thing. I believe this letter came about as a result of an
10 agreement on my part, to do a favor for the group; that is,
11 to hold the shares of stock while they settled into their
12 new offices.

13 Q The word "you" appears in the context of a
14 letter addressed to Franklin National Bank --

15 A Right.

16 Q (Continuing) -- on which the salutation is
17 "Gentlemen". Doesn't the word "you" refer to Franklin
18 National Bank?

19 A Certainly not in its own capacity. I would
20 say only in the capacity as a custodian, without getting in-
21 to the legal ramifications of custodianship, but certainly
22 not for our own account.

23 Q Then what does that sentence mean to your own
24 understanding?

25 A To my understanding, that meant --

MR. BARNAN: Objection.

THE WITNESS: (Continuing) -- that we had been asked, as an accommodation for the buying group, to hold the shares over the weekend and, this is merely furtherance of that.

Q Do you recall what day of the week May 14th was?

A I believe it was a Thursday.

Q Would you describe the nature of your agreement to hold the shares over the weekend?

A It was of the most informal and brief nature. I'm sure, if my memory serves me correct, it was merely a one sentence request: "Would you hold this for us? We haven't set up our offices. We don't know where we'll be."

Q By whom was it made?

A By a representative of the buying group.

Q Do you know the name?

A Most likely would have been Olanow or Pierson.

Q And when, on May 14, 1964, was that request made?

A Probably -- When? I couldn't give you the time precisely. At some time during the closing.

Q Could you give the time, in relation to the conduct of the closing: commencement, end of the closing?

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2 A It would not have been at the commencement,
3 since we had undertaken not to do anything but provide a
4 conference room. I would say probably at the end of the
5 closing, but that would be pure speculation on my part.

6 Q Do you recall how many certificates there were
7 representing the shares of stock?

8 A There was a considerable number. I don't re-
9 call specifically.

10 Q Was it a dozen or fifty?

11 A It was less than fifty and more than twelve,
12 from my recollection.

13 Q Approximately how large were these certifi-
14 cates?

15 A I don't recall. I suppose 8-1/2 by 11 inches.

16 Q Why were you asked to hold them?

17 MR. BERMAN: Objection to the question
18 as to form. You mean what was he informed as to
19 the reason?

20 Q Were you informed of the reason for that
21 request?

22 MR. BERMAN: The witness answered that
23 already.

24 A If my memory serves me correct, the buying
25 group had not found any specific location and there was no

1
2 other way, presumably, in which the seller could direct the
3 additional securities to the buying group, so I agreed as a
4 courtesy to act as an intermediary.

5 Q Was your agreement to act as such intermediary
6 embodied in any document or writing?

7 A Not other than what you have before you now.

8 Q What did you physically do with them, when they
9 were delivered?

10 A Chances are, I stuffed them in my desk and --
11 or gave them to some clerk to hold in a cabinet.

12 Q By whom were they delivered to you?

13 A I don't recall who delivered them to me speci-
14 fically. I know I ended up with them.

15 Q Were these shares endorsed?

16 A I don't recall.

17 MR. BERMAN: You asked that question.

18 In accepting this letter, what was your under-
19 standing as to the reason that Mr. Tolmadge would deliver to
20 you or undertake to deliver to you the 1,166.7 shares of
21 Roosevelt Capital Corporation stock?

22 A If my memory --

23 MR. BERMAN: Objection to the question; form.

24 THE WITNESS: (Continuing) -- serves me
25 correct, Mr. Tolmadge did not know of the location

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2 the shares would ultimately be located, and so for
3 lack of a better place to send them, I was agreeable
4 to take them in. Now this is, again, part specula-
5 tion, part memory. I don't know how you divide it.
6 This took place eight years ago and, in the interest
7 of speaking truthfully, I have to make that comment.
8

9 Q Of course, I am not asking you to speculate,
10 but to answer to the best of your recollection.

11 A To the best of my recollection, what I have
12 said is correct.

13 Q At the time of receiving this letter, and at
14 the time of receiving the other shares of stock, on May 14,
15 1964, did you know the location of the buying group?

16 A No. I believe they never had a permanent lo-
17 cation, but I know I'm not sure.

18 Q Did you have any notice of a location?

19 A Not at that time; that is, May 14th.

20 Mr. Mastronardo, this letter, in the second
21 paragraph, states: "I will make every effort to procure
22 these shares. In the event I am not able to deliver these
23 shares properly endorsed to you within 30 days from the date
24 hereof, I will deliver to you my check for \$10 for each and
25 every share which I do not deliver."

Did Mr. Tolmadge tell you why he represented

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2 to you or to the bank by this letter that he would make every
3 effort to procure these shares?

4 A Well, again, I presume and this is memory that
5 the buyers wanted all the shares of the company and that Mr.
6 Tolmadge, for one reason or another, could not make delivery
7 of all the shares and he wanted to set up a means by which
8 the balance would be delivered to the buyers.

9 Q Did his failure to procure these shares or his
10 failure to make each effort to procure these shares, have
11 been a matter of concern to the bank?

12 A None whatsoever.

13 Q To your knowledge, then, was there any reason
14 or did you require that Mr. Tolmadge make the representation
15 that he will make every effort to procure these shares?

16 A To my knowledge, I did not require him to do
17 anything.

18 Q Did you request he write this letter?

19 A Not to my knowledge; in fact, I would say no.

20 Q Was this letter typed by an employee of the
21 bank?

22 A I believe it was. It appears to be of similar
23 type to the other letter you showed me earlier.

24 Q Were you requested to provide an employee of
25 the bank to type this letter?

1
2 A Chances are I was. Again, this took place
3 eight years ago and I am certain myself, it took place be-
4 cause I know I didn't type it.
5

6 Q Did you require that Mr. Tolmadge represent to
7 you that the shares, which he has undertaken by that letter
8 to procure, be properly endorsed to the bank?

9 A No. Never endorsed to the bank. The bank had
10 no interest in those shares at any time.

11 Q Did Mr. Tolmadge explain to you then, why he
12 wrote or represented by this letter that, "In the event I am
13 not able to deliver these shares properly endorsed to you
14 within 30 days from the date hereof, I will deliver to you
15 my check for \$10 for each and every share which I do not de-
16 liver."?

17 MR. BERMAN: I don't want to start differ-
18 ing with interpretation, but as you read it already
19 as "to you," meaning delivered or endorsed to you
20 and I think Mr. Tolmadge should appear and answer
21 that. Because you asked whether the witness was
22 informed of a reason Mr. Tolmadge said he would
23 agree to endorse it to the bank and I would point
24 out to you, you have no direct statement he did so
25 to the bank.

The letter is ambiguous as to

1
2 whether or not the delivery of the shares or not
3 endorsed, was to be to the bank. All I can say
4 is the letter was written by Tolmadge and I would
5 suggest you do not interpret those questions.

6 MR. BRACHTL: I have asked the witness to
7 state whether or not he was told or given an ex-
8 planation for the sentence in this letter which
9 I have quoted.

10 MR. BERMAN: You also asked -- If you want
11 to ask the Reporter to read the question, but I re-
12 call your implication that the letter says that
13 the certificates were to be endorsed to the bank.

14 I am suggesting you don't
15 interpret or possibly misinterpret that.

16 MR. BRACHTL: Would the Reporter read back
17 that question, please?

18 (Reporter reads back.)

19 Q Do you understand the question?

20 A I believe so. All I can say is that at no
21 point did we require any shares be endorsed to our bank.

22 As I brought out before, we had absolutely no
23 interest in these shares and I would see if they were en-
24 dorsed, they were endorsed to the bank. We had not been
25 able to make a judgment as to the genuineness of the

1
2 registered owner's signature. No basis for us to accept any
3 endorsement to ourselves.

4 MR. BERMAN: Please read back the answer.

5 (Reporter reads back.)

6 Off the record.

7 (Discussion off the record)

8 Q Mr. Mastronardo, when you wrote the word "ac-
9 cepted" there (indicating) beneath "Franklin National Bank,"
10 and beneath that, your signature (indicating), on the letter
11 of which this is a copy, to what did your acceptance of the
12 word refer?

13 A That I would provide a home for these securi-
14 ties during the time that the buyers were locating and I do
15 not undertake any other responsibility.

16 Q Did Mr. Tolmadge deliver the shares to which
17 reference is made in this letter?

18 A Yes. I believe I did receive them subsequent-
19 ly, with a covering letter, from Mr. Tolmadge.

20 Q Had Mr. Tolmadge not delivered these shares,
21 which he undertook to deliver by this letter, was it your
22 understanding that the bank was required to collect \$10
23 for each and every share which he did not deliver?

24 A No --

25 MR. BERMAN: Objection as to form.

1
2 THE WITNESS: (Continuing) -- not the bank
3 itself and we had no responsibility to see that
4 agreement was lived up to.

5 Q Did you dictate the contents of this letter to
6 the clerical person who prepared it?

7 A Definitely not. I would have no basis for de-
8 termining what was placed in that letter. It was not within
9 my knowledge since I have had no knowledge of the under-
10 standing between the parties.

11 Q Did you ask Mr. Tolmadge for an explanation of
12 the contents of this letter?

13 A I may have. I do not recall specifically. I
14 must have had some inkling to why I signed the letter. I
15 would certainly think so.

16 Q Did you sign and return a copy of the original
17 of this letter to Mr. Tolmadge?

18 A I don't recall what I returned to Mr. Tolmadge
19 or who actually received the letter, for that matter, but
20 that is my signature (indicating).

21 Q Did you retain this letter, or a copy of it,
22 in the files of the bank?

23 A I wouldn't believe so, because from my recol-
24 lection, there was not a copy in the bank files. It may
25 have though.

1
2 Q In what manner were the 1,166.7 shares refer-
3 red to in this letter, delivered to you?

4 A Ultimately, they were placed in my hands.

5 Q By whom?

6 A By one of the parties. I don't recall speci-
7 fically who put them in my hands.

8 Q Where did that delivery take place?

9 A Chances are it took place in the conference
10 room; in fact, I'm almost certain it did.

11 Q On what date?

12 A On May 14th. We're speaking of the initial
13 delivery, not of the --

14 I'm sorry. I'm speaking of the 1,666.7 shares
15 referred to in this letter (indicating).

16 The second delivery, if I may use that expres-
17 sion, took place, as I mentioned, under cover of a letter
18 from Mr. Tolmadge which I received about a week or ten days
19 later. I don't remember the time now.

20 MR. BRACHTL: Please mark this Xerox
21 copy of a letter dated May 20, 1964 "Plaintiffs'
22 Exhibit 7 for Identification."

23 (Paper, above described, marked
24 "Plaintiffs' Exhibit 7 for Identification,"
25 as of this date.)

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Q Mr. Mastronardo, I am handing you Plaintiffs' Exhibit 7 for Identification, which purports to be a Xerox copy of a letter bearing the signature of Sidney Tolmadge and addressed to you. Do you recognize that letter?

A Yes, I do.

Q Did you receive such a letter?

A Yes, I believe so.

MR. BERMAN: Off the record.

(Discussion off the record)

Q This letter refers to two certificates. The description of the first contained in the letter is certificate number fourteen for 500 shares of Roosevelt Capital Corporation stock, endorsed by Ira Katz. Did you examine the certificates upon receipt?

A I probably did look to see if they were with the letter. I'm certain I did not examine them in detail.

Q Did two certificates accompany this letter?

A I believe they did.

Q But you don't recall if they were endorsed?

A I would assume they were endorsed, since the letter states they were endorsed.

Q Do you have any recollection of their being endorsed to the bank?

A I would say, as I mentioned before, they were

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2 most definitely not endorsed to the bank, since at no time
3 did our bank have any interest of any kind in those certifi-
4 cates.

5 Q The letter also states: "I do not owe you any
6 further stock." What was your understanding of the meaning
7 of that statement at the time you received this letter?

8 A Taken in the context of my previous testimony,
9 that Mr. Tolmadge had promised to deliver additional shares
10 and he was living up to that promise.

11 Q This letter appears to be dated May 20, 1964?

12 A Right.

13 Q Do you recall the date on which you received
14 it?

15 A No, I do not. Certainly, it was some time be-
16 tween May 20th and the date on which appears below, May 26th.

17 Q At the time you received this letter and the
18 certificates which accompanied it, did you still hold the
19 other securities which you received on May 14th?

20 A I tend to think, in fact I am certain, I did
21 not because I had made a delivery of the other securities
22 between May 20th and May 26th. I see that the letter says:
23 "Registered Mail, Return Receipt Requested." That might be
24 some indication our bank physically got it, but I do not
25 remember.

1
2 Q Did you deliver the shares previously received,
3 that is, the shares which you received on May 14, 1964, out-
4 side of the premises of the Hanover Square branch?

5 A Yes, I believe so.

6 Q To whom did you deliver those shares?

7 A To the officers of the so-called "new" Roosevelt
8 Capital Corporation.

9 Q Where did that delivery take place?

10 A In a law office somewhere in downtown area.

11 Q Do you recall the date of that delivery?

12 A No, but it may be indicated upon a receipt
13 which, I believe, I obtained at that time.

14 MR. BRACHTL: Would you mark this one
15 sheet of paper "Plaintiffs' Exhibit 8 for Identi-
16 fication."

17 (Paper, above described, marked "Plaintiffs'
18 Exhibit 8 for Identification," as of this date.)

19 Q Mr. Mastronardo, I am handing you Plaintiffs'
20 Exhibit 8 for Identification, which is a Xerox copy of what
21 purports to be a receipt for shares of Roosevelt Capital Cor-
22 poration.

23 A Yes.

24 Q Is that the receipt to which you have referred?

25 A Yes, it is.

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2 Q Mr. Mastronardo, there appear to be handwritten
3 notations in the upper left-hand corner of that form, which
4 are not very clear on the copy I have handed to you. However,
5 can you ascertain from that copy whether that is your hand-
6 writing?

7 A Yes, it is my handwriting.

8 Q And do you know what is stated or written
9 there?

10 A There (indicating), I can't give it to you
11 word for word, because the copy is poor.

12 Q Well, before you proceed, Mr. Mastronardo, I
13 have a copy of page 57 of the transcript of your deposition
14 on May 26, 1965, during which you were asked to read that
15 notation and I hand you this page 57 and ask if that will
16 assist you in reading, and if you can confirm that reading
17 is what appears at the top of the original of that receipt?

18 A Yes, it does so appear.

19 Q Would you read that, please, for the purposes
20 of the record.

21 A Yes. "We were asked to hold these certificates
22 for safekeeping over the weekend. It was subsequently
23 being delivered to Ray Pierson on May 20 in the presence of
24 and with the express consent of Olanow and all the corporate
25 officers."

1
2 Q Now, is that your notation on the original re-
3 ceipt form (indicating)?

4 A Yes, it is.

5 Q Who prepared the receipt?

6 A I would say my secretary, in all likelihood,
7 prepared it.

8 Q When was the notation, at the time it was, of
9 that receipt made?

10 A I would say it was made on May 20, 1964.

11 Q Was that notation accurate at the time it was
12 made?

13 A Most certainly.

14 In addition to Ray Pierson and Olanow, who
15 else was present at that meeting with you?

16 A Apparently, as indicated by the memorandum,
17 the other corporate officers, whoever they may have been.

18 Q Do you recall who those people were?

19 A I don't recall their names specifically, but
20 undoubtedly, I made it a point to deliver the shares to all
21 the officers since I was concerned about who they were to be
22 delivered to, who was the proper party to receive them.

23 Q Were you concerned about a proper party to
24 whom you should deliver these securities?

25 A At the outset, I assumed all the parties to

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2 the transactions we were discussing were acting in good faith
3 and were reputable in every respect. On May 20th, I had
4 reason to doubt this to be true.

5 Q In what manner, or in what respect, did you
6 doubt that the persons present at the meeting had acted in
7 good faith with respect to the bank?

8 A I assumed the meeting was for the purpose of
9 consummating a legitimate transaction in which there was a
10 good faith business deal, and I just, based on information
11 I developed and probably on intuition in addition, felt that
12 we ought to divorce ourselves from the buying group at that
13 time.

14 Were you concerned that the retention of these
15 securities by the bank, or by you on the bank's behalf,
16 subjected the bank to some possible injury?

17 A My concern was I was dealing with people in
18 which I could not have absolute confidence and you know that
19 confidence was impaired, as I brought out before, my personal
20 belief is not to have any dealings of any nature with
21 such people.

22 Q When you received the shares of Roosevelt
23 Capital Corporation stock on May 14th, did you give, to the
24 person or persons who tendered those shares to you, a re-
25 ceipt acknowledging receipt and retention of them by you?

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2 A I don't remember having done so. It would seem
3 the thing to do.

4 Q Had you done so, would you have retained a copy
5 of such receipt?
6

7 A Yes. I believe I would have, in the normal
8 course of events.

9 MR. BERMAN: Objection.

10 Q Is there any reason, to your recollection,
11 that you would not have required or issued such a receipt?

12 MR. BERMAN: Assuming or whether or not
13 they asked for it?

14 MR. BRACHTL: I just asked is there any
15 reason he did not.

16 A Purely, oversight. Again, I think whenever a
17 bank takes in securities, they ought to get a receipt for
18 them, regardless of purpose.

19 Q Was the doubt as to the good faith of the per-
20 sons to whom you delivered these shares, a doubt related to
21 their willingness to accept redelivery?

22 A No. That was not the initial doubt. After I
23 developed unfavorable information on one of the participants,
24 everything at that point was thrown into question.

25 Q At whose insistence was a meeting held for the
delivery of these shares?

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A It must have been at mine.

2

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Q Do you recall arranging such a meeting?

4

A I'm fairly certain I did. Yes.

5

6

Q In what manner or what steps were taken to arrange such a meeting?

7

8

A I'm sure I telephoned one of the participants, at whatever telephone number I had at that time, where they were located, be it hotel or otherwise, and arranged a meeting.

10

11

Q Do you recall the person to whom you spoke?

12

13

A I don't recall, but I know this is speculative. It was probably Ray Pierson, since he appeared to be the fellow in the company most active.

14

15

Q What was your purpose for the meeting?

16

17

A As I mentioned before, my confidence in these people was brought into question and it is my practice once that happens, not to have any further relationship with such people and to act with haste in achieving that objective.

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Q Prior to the meeting at which these shares were delivered and you received this receipt, did you request of any of the members of the buying group that they accept redelivery?

22

23

24

25

A I probably did. I'm sure that I requested they take redelivery. Now, the actual order of my requests,

1 I don't recall.

2
3 Q Was there more than one such request?

4 A I believe I had some difficulty in getting
5 these people to accept redelivery.

6 Q Describe it.

7 A Well, one reason or another, they did not
8 come into the bank for that purpose. Basically, that's it.

9 Q Did you authorize such a meeting as necessary
10 for this redelivery?

11 A Yes, because I had some doubt in my mind the
12 proper party to whom I should deliver these securities,
13 since they were given me in such an informal manner at the
14 outset, and with no responsibility on our part except to be
15 a nice guy and hold on to them.

16 I think a bank officer never can anticipate
17 the workings of someone who he distrusts. That fellow has
18 24 hours a day to concoct ways and means of doing whatever
19 he likes to do, and the best defense is divorce yourself
20 from such individual or individuals.

21 Q In your requests to these individuals to ac-
22 cept redelivery, did you ask instructions as to the proper
23 persons to whom shares should be delivered?

24 A No, because I didn't trust them and I felt
25 if I had all the officers there, that would sufficiently

1
2 protect our bank.

3 Q At whose insistence was the meeting at which
4 these shares were redelivered, held outside of the bank?

5 A It was held at my insistence. I didn't care
6 where I had redelivery. I wanted to make redelivery.

7 Q Did you consult with counsel as to the manner
8 of redelivery, or the effect of retention of these shares?

9 A No, I did not. I saw no need to.

10 Q Was there any specific fear that you entertain-
11 ed, regarding the liability of the bank or any liability of
12 the bank, in connection with the retention of these shares?

13 MR. BERMAN: Objection; form.

14 A As I brought out before, when dealing with
15 people you do not have absolute confidence in, the best
16 course of action is to limit that relationship immediately.

17 Q Did you receive the additional or other shares
18 from Mr. Tolmadge, after the delivery of the shares received
19 or the redelivery rather of the shares received, on May 14th?

20 A Yes, I would say so, because I would have de-
21 livered them all at once, if I had all of them.

22 Q What did you do with the second group of
23 shares received?

24 A If memory serves me correct, I could only con-
25 tact the attorney for the buyers and made delivery to him at

1
2 his office, and my reason, if I recall correctly, the at-
3 torney being a member of the bar, would be an acceptable
4 party to make delivery.

5 Q Mr. Mastronardo, Plaintiffs' Exhibit 7 for Ident-
6 tification, bears at the lower left, the typed statement:
7 "In accordance with foregoing, received above shares", and
8 an apparent signature "Samuel Stone" and the date "May 26,
9 1964."

10 A Yes.

11 Q Is that a receipt of acknowledgment or an ack-
12 nowledgment of receipt of those shares by Mr. Stone?

13 A Yes. I believe he signed that in my presence.

14 Q Is that date correctly stated?

15 A Yes, it is.

16 Q Do you recall the time of the day in which
17 that delivery took place?

18 A No, I don't. It would be between nine o'clock
19 and five in the afternoon.

20 Q Was that redelivery at Mr. Stone's office?

21 A I believe it is correct. It seems to me I did
22 visit his office at that time, for the only time.

23 Q Was Mr. Stone's office at an address other than
24 the place the first meeting took place for the redelivery
25 of the shares?

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2 A Yes, I believe it was. I think, and it is
3 stretching it; it's eight years ago, somewhere on Broadway.

4 Q Was Mr. Stone present at the May 14th meeting
5 at the bank?

6 A I don't recall. He may have been. Of May 14th?

7 Q Yes.

8 A I'm sorry. I thought you meant the first de-
9 livery. Yes, he certainly was present at the May 14th
10 meeting.

11 Q Did you recognize Mr. Stone at that time, or
12 were you informed he was counsel for the purchasing group?

13 A Yes, that was my understanding.

14 Q Did you make any attempt to deliver the first
15 group of shares to Mr. Stone as counsel?

16 A I may have. I don't remember at this point.

17 Q Was Mr. Stone present when you ultimately de-
18 livered the first group of shares?

19 A I don't recall.

20 Q Was he an officer of the Roosevelt Capital
21 Corporation?

22 A I don't think so. He may have been, but I don't
23 think so.

24 Q Why did you regard a meeting of all officers of
25

1
2 group of shares, whereas delivery to Mr. Stone alone satis-
3 fied you, in the second instance?

4 MR. BERMAN: Objection to the question
5 as to form.

6 A I would say probably I was concerned who deliv-
7 ered the shares to, as I mentioned before, and that repre-
8 sented the bulk of the shares. I don't know what percentage,
9 and once having accomplished that delivery, as I regarded, to
10 the proper parties, the incident of delivery of a few addi-
11 tional shares was not as much concern to me and I thought
12 delivery to the attorney for the buyers would suffice, parti-
13 cularly that the delivery would be made a subsequent time.

14 Q In what form was it?

15 A A signature below that of Mr. Stone.

16 Q Does that appear on this copy?

17 A Yes. Ray Pierson seems to have signed below
18 Mr. Stone's signature.

19 MR. BRAGHTL: Off the record.

20 (Discussion off the record)

21 We will adjourn for lunch.

22 Examination will resume at two o'clock, p.m.

23 * * *

24 Examination resumes.

25 Please mark this paper,

1
2 dated May 26, 1964 "Plaintiffs' Exhibit 9 for
3 Identification."

4 (Paper, above described, marked
5 "Plaintiffs' Exhibit 9 for Identification,"
6 as of this date.)

7 Q Mr. Mastronardo, I am handing you Plaintiffs' Exhibit
8 9 for Identification, which is a Xerox copy of what purports
9 to be a paper with writing with the printed word "Debit" in
10 the upper left-hand corner. Can you identify that document?

11 A Yes. This is a debit entry. It bears the
12 date, May 26, 1964, and it is in the amount of \$160,000 and
13 contains the description: "To close account - official
14 check charge number 7531415 and 7531416 official checks not
15 charged to this account 5-15-64. This will adjust" and it
16 bears signature or apparently, of one of the tellers or book-
17 keepers who prepared this entry.

18 Q Did you prepare it?

19 A No, I did not; but I am certain it was pre-
20 pared by my direction.

21 Q What was the date on which it was prepared?

22 A May 26, 1964.

23 Q Can you tell me what that debit entry repre-
24 sents?

25 A I believe the description is self-explanatory.

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2 It is to cover the issuance of two official checks, the
3 numbers which I cited, which, apparently, had not been charged
4 to the account when they were supposed to.

5 Q Are the check numbers, which are referred to
6 in that debit entry, the numbers of the checks which you id-
7 entified as those issued by the bank on May 14, 1964, for
8 \$118,000 and \$42,000, respectively?

9 A Actually no. The checks which you just showed
10 me, end with the digits "7" and "8". The checks I described
11 to you, ended with the digits "5" and "6".

12 Q Can you explain that discrepancy?

13 A I don't recall. Again, I must speculate on
14 the point. I must only speculate the initial two checks were
15 typed improperly, these numbers "5" and "6", for some reason
16 or another, and had to be retyped number "7" and "8". This
17 debit entry, as you will note from the date, was prepared af-
18 ter the fact, that is on May 26th when actually it should
19 have been prepared and processed, May 14th.

20 Q Why would this debit entry, Plaintiffs' Exhibit
21 9 for Identification, properly have been prepared May 14th?

22 A I have brought out in my previous testimony in
23 the prior deposition, which you referred to at the outset,
24 the entries prepared May 14th were misrouted, never posted
25 May 14th as they should have been posted and, undoubtedly,

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this was due to the transfers from the Island to New York and the setting up of new offices in New York.

MR. BRACHTL: Would you mark this ledger sheet "Plaintiffs' Exhibit 10 for Identification."

(Paper, above described, marked "Plaintiffs' Exhibit 10 for Identification," as of this date.)

Q Mr. Mastronardo, I am handing you Plaintiffs' Exhibit 10 for Identification. It is a Xerox copy of what appears to be a printed or typewritten ledger form. Can you identify it?

A Yes. It is headed "Ledger" and purports to show the activity that took place in the account of Roosevelt Capital Corporation during the month of May, 1964.

Q Is this a copy of the ledger for the company?

A Yes, I would say it is.

Q Would you please indicate the entry on this ledger, which represents the debit directed by that debit ticket, Plaintiffs' Exhibit 9 for Identification?

A I would say it is the final entry on the ledger that is, the one for \$160,000 which is followed by the letters, "DM," meaning debit memorandum. It was processed on the date, May 26th, and it did, in fact, close out the account.

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2 Q Mr. Mastronardo, you suggested that the dis-
3 parity or the difference between the check numbers noted on
4 the debit ticket, different from those on the face of the
5 checks, Plaintiffs' Exhibits 1 and 4 for Identification, due
6 to an error in typing the checks?

7 MR. BERMAN: I think it was the testimony
8 in the nature of speculation.

9 A Yes.

10 Q To your knowledge, are the numbers shown on
11 the face of these checks typed on the face of the check at
12 the time of issuance, or are these number preprinted on the
13 face of each check?

14 MR. BERMAN: I must object and I may be
15 incorrect. I believe his testimony was that in
16 typing the original two checks, not the numbers
17 but the two checks, there might have been a mis-
18 take which required the issuance of two different
19 checks.

20 MR. BRACHTL: Then I misunderstood.

21 Q Is that correct, Mr. Mastronardo? Was
22 that the fact?

23 A It was my speculation that initially the two
24 checks were prepared ending with digits "5" and "6", which
25 are preprinted, and they may have incorrectly typed,

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2 requiring the issuance of two new checks presumably of iden-
3 tical amount, with digits ending "7" and "8".

4 The other speculation is the one who prepared
5 it merely took the wrong numbers off whatever record he was
6 working from.

7 Q Can you tell me what record the individual
8 preparing such a debit ticket would work from?

9 A I really couldn't say what record. I don't
10 recall what records we had at that time to keep official re-
11 cord of official checks issued.

12 Q Mr. Mastronardo, according to the ledger of
13 the Roosevelt Capital Corporation, Plaintiffs' Exhibit 10
14 for Identification, can you ascertain the date of the entry
15 of the debit?

16 A As I mentioned to you earlier, the date of the
17 entry of the debit is the same date as the date indicated on
18 the ticket; that is, May 26, 1964.

19 Q Were debit tickets, or was a debit ticket of
20 the type of Plaintiffs' Exhibit 9 for Identification, pre-
21 pared at the time of the issuance of the two checks, on
22 May 14, 1964?

23 A Yes. They were so prepared and processed.

24 Q Would there have been separate debit tickets,
25 one representing the amount of each check?

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2 A Most likely. I would think I would have pre-
3 pared separate debit tickets, although it is possible I com-
4 bined them into one.

5 Q Did you prepare the original debit ticket on
6 May 14, 1964?

7 A I can't recall if I specifically prepared them.
8 Chances are, I did or I had someone do it, but chances are
9 I prepared them since I was the only representative of the
10 bank at the closing.

11 Q Were they processed in any way on May 14th?

12 A Yes.

13 Q In what manner were they processed?

14 A As was the custom, they were handed to the
15 bookkeeping department for appropriate action, on ledger
16 sheets.

17 Q Are those debit tickets part of a combined or
18 attached form; that is to say, are they attached to the
19 checks prior to issuance?

20 A No, they are not. This is a separate pad of
21 debit tickets which Franklin National Bank did use at that
22 time.

23 Q If the debit tickets were prepared and process-
24 ed on May 14th, representing the amounts of these checks, why
25 are they not posted to the Roosevelt Capital Corporation

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2 account?

3 A Internal error. Due to the fact initially the
4 bank's bookkeeper handled the accounts in Long Island, it
5 seems when they moved to New York City, undoubtedly, there
6 was some degree of confusion or lack of orientation as to
7 how this should be handled.

8 Q At the time of the opening of the bank and on
9 or about May 14th, did the Hanover Square branch conduct its
10 own bookkeeping operations or were all bookkeeping matters
11 being attended to in Long Island?

12 MR. BERMAN: Objection. Are you talking
13 about May 14th or the official opening of the
14 branch?

15 MR. BRACHTEL: To begin with, May 14th.

16 A Well, as brought out before, I think there was
17 some business conducted prior to the official opening, so I
18 presume that is not your question.

19 I believe, and this is strictly speculation
20 again, that there was some processing done within the branch
21 for its own activity, but I am not at all sure.

22 Q Did you testify earlier today that the bank,
23 in the month of May, 1964, after its opening, balanced out
24 its accounts every day; proved out?

25 A Yes. I'm sure they did it before May 18th as

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1 well, for whatever activity was conducted at that time.

2 Q At the time of the preparation of the two
3 checks, for \$118,000 and \$42,000 respectively, were credit
4 advice forms prepared as well?

5 A As I mentioned earlier, the credit advice is
6 part of the official check form. It is, in effect, a dupli-
7 cate of the official check.
8

9 Q And to your knowledge, were those credits rep-
10 resented by that credit advice, posted?

11 A Yes. To my knowledge, they were.

12 Q What is the basis for your knowledge?

13 A The fact that it was never questioned. I
14 would think if that were enough, but if that should have been,
15 as I believed they have been, it would have been raised be-
16 fore. They were negotiated by the payee, and when the checks
17 came in to the department responsible for matching the out-
18 standing checks with the checks paid, apparently there was
19 no difficulty.

20 Q Was there any difficulty with regard to the
21 failure to post the debits?

22 A None whatsoever, until the question was raised
23 in the action that we are now talking about.

24 Q Well, at the time or rather in the days im-
25 mediately following May 14, 1964, if the credit advices were

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2 properly posted, as you have suggested that they were, and
3 the debits had not been posted to the account of Roosevelt
4 Capital Corporation, wouldn't the bank have been out of bal-
5 ance at the close of business during every day that existed?

6 A Certainly and this leads me to speculate this
7 was not an isolated instance, because if these were the only
8 two items that were not properly posted, if that should have
9 been, I would have been notified very quickly. Apparently
10 there was some difficulty in the internal organization of the
11 bank to see to it that these were posted on time, but that is
12 speculation on my part.

13 Q Was it the practice in the Hanover Square bran-
14 ch, from the commencement of its business, to circulate notice
15 to bank officers of what might be regarded as problems, such
16 as the absence or the failure to locate a \$160,000 debit?

17 A Well, if there was a failure to locate a
18 \$160,000 debit, it certainly would have been brought to
19 someone's attention, and I cannot conceive of no action be-
20 ing taken which, again, leads me to speculate that this was
21 not an isolated problem; that the banks, contrary to the
22 impression the public may have, do make internal mistakes,
23 and are not as perfectly organized as they are at all times.

24 Q You have stated, to your recollection, you
25 directed the preparation of the debit memoranda dated May 26th.

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2 How did it come to your attention that such a memorandum was
3 necessary?

4 A Well, at that time, if memory serves me correct,
5 I had already requested the principals of Roosevelt Capital
6 to make other banking arrangements and, in this instance,
7 Mr. Ray Pierson came into our bank to draw down the balance
8 in the account. In so doing, it was brought to my attention
9 that the account balance shown was \$227,000, whereas it only
10 should have been \$67,000, this being due to the fact that we
11 failed, as we should have done, to post on May 14th the en-
12 try or entries of \$160,000 as represented by this memorandum.

13 Q Mr. Mastronardo, earlier you testified to doubt
14 as to the good faith of the individuals involved in what I
15 will call the purchasing group of Roosevelt Capital Corpora-
16 tion. Did that doubt, or did you express that doubt in the
17 form of concern over checks or withdrawals from the account
18 of Roosevelt Capital Corporation?

19 A No. I expressed that concern in deciding that
20 this relationship with the purchasing group should be term-
21 inated as quickly as possible; that no further dealings be
22 conducted with these people.

23 Q When did you reach that conclusion or make
24 that judgment?

25 A I would say around May 20th.

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Q At that time, were you aware of what activity had taken place in the account?

A No. I had assumed, at that time, all the activity in the account that was a matter of direct knowledge to me, had been properly posted and I had no reason to believe otherwise.

Q Where, physically in the bank, would the ledger sheet of Roosevelt Capital Corporation have been located, during the period May 24th to May 26th?

A In our office at 130 Pearl Street, that being Hanover Square, specifically under the supervision of the bookkeeping department, I believe.

Q On May 26th, when Mr. Pierson came to the bank to close the account, did you consult the ledger sheet for Roosevelt Capital Corporation's account?

A Yes, when it was brought to my attention either by the teller or someone employed by the office that the balance shown was \$227,000. I knew that this could not be correct and I suspected that we had failed to properly post the entries at that time. I learned subsequently, although I did not know it at the time, that Mr. Pierson was attempting to draw out the entire balance of \$227,000.

Q Now, how did you know that \$227,000 could not be the balance in the account, on May 26, 1964?

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2 A Because I felt I had knowledge of all the en-
3 tries that were made to that account and unless some addi-
4 tional funds were deposited in that account, of which I did
5 not have any knowledge, which is always a possibility, I
6 could not see how the balance would be that amount.

7 Q Had you asked the bookkeeping department to
8 keep you abreast of transactions that took place in that
9 account?

10 A No. I don't recall specifically asking for
11 that. I may have instructed our tellers to alert me to any
12 transactions that took place, but I don't really recall
13 whether or not I did. It's a possibility

14 Q How did you know it was the intention of Mr.
15 Pierson to withdraw \$227,000?

16 A This was told to me later by some party to the
17 transaction. I don't know who told it to me. It may have
18 been you or someone else.

19 Q Did he ever prepare a withdrawal slip or a
20 check in that amount?

21 A Not that I know. All I know is when I knew
22 the balance was \$227,000, I felt it was not correct, or if
23 was correct, I wanted to make sure it was.

24 Q Did Mr. Pierson consult you at the time that
25 he visited the bank on May 26th?

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2 A If my memory serves me correct, he did not con-
3 sult me, went directly to the teller, which now leads me to
4 believe I did alert the teller.

5 Q Who else would you have notified to be aware of
6 activity in the account?

7 A Well, I would tell the chief operating officer
8 of the branch and he would make certain the appropriate
9 people were on alert.

10 Q Did you do that in this case?

11 A I don't recall, as I told you. I speculate now
12 I did, because apparently it was brought to my attention Mr.
13 Pierson was drawing out the balance.

14 Q Would you have been aware that the bank was
15 out of balance, as it had been, in the amount of \$160,000?

16 A No, unless it related to activities which I
17 initiated and I speculate again that the bank must have
18 been completely out of balance, because of the transfer and
19 this, again, is speculation; that it was a prevalent thing
20 that again, during that period, there must have been some
21 lack of coordination at the bank. If I had the only items
22 that weren't posted, I would have known about it.

23 Q If the credit ticket representing \$42,000 and
24 \$118,000 had been posted following the issuance of the
25 checks and the debit tickets had not been and the bank was,

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2 therefore, out of balance at the close of business, would an
3 entry have been made for \$160,000 or the amount that it was
4 out of balance to a suspension account?

5 A It is possible that most likely -- and I am
6 again speculating, the end of the day the balance totalled
7 up would find they were equal to each other. If all the post-
8 ing for the entire bank was done in Long Island, the inter-
9 branch accounts -- We had, let's say 100 branches. It is
10 possible that they were out of balance. There may have been
11 corresponding mistakes that would offset each other.

12 Q Are you saying the branches were not respon-
13 sible to the balance out individually at the close of each
14 day?

15 A No, the balances are -- done each day. What
16 I'm saying, it is possible that the actual entries may have
17 been made on Long Island, since we had not formally set up
18 the branch in New York. I don't know whether on May 14th
19 or May 15th, the physical recording of the entry was done in
20 New York, or whether it was done in Long Island.

21 Q Do you mean, there was a separate ledger out on
22 Long Island for the Roosevelt Capital Corporation?

23 A Gee, I really don't know. Again, I qualify all
24 my answers in the sense that I am speculating what the inter-
25 nal procedures were. I do know we balanced the books at the

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2 end of each day, but because of the move from Long Island to
3 New York, I couldn't say where the physical entries were pro-
4 cessed. I do recall these entries were misrouted. They were
5 sent to Long Island. Why, I couldn't answer, and maybe, the
6 posting was made in New York, but for some reason, they went
7 to Long Island. I don't know.

8 Q How do you know the tickets were misrouted to
9 Long Island?

10 A We developed that knowledge in trying to recon-
11 struct our file when this case came up.

12 Q When you say "we," who would have worked with
13 you?

14 A Whoever in the bank was responsible trying to
15 bring the file up to date.

16 Q Would that have been a Mr. Sidlik?

17 A No. As the senior operating officer, he would
18 not be involved in anything of this nature. Mr. Sidlik is
19 responsible for general operating policies and, usually,
20 those people are concerned with, and implement policy.

21 Q Mr. Mastronardo, Plaintiffs' Exhibit 10 for
22 Identification, the ledger for Roosevelt Capital Corporation,
23 shows as its first entry, or at least the first posting shows
24 "CO" on May 15th (handing)?

25 A Yes.

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2 Q Is that the date on which Roosevelt Capital
3 Corporation opened its account?

4 A No, it's May 14th, as you can see by the date
5 of the checks. The initial transactions took place May 14th
6 and the ledger does not correspond with the checks.

7 Q Does Roosevelt Capital Corporation have an ac-
8 count at prior to May 14th?

9 A Not the so-called "new" Roosevelt Capital Cor-
10 poration.

11 Q Was there such an account; if there was?

12 A I believe there was an account which had the
13 words "Roosevelt Capital" in its name, out at Roosevelt Field.
14 Whether it was a corporation or a partnership or otherwise,
15 I could not say, because -- but, it was controlled by people
16 other than those in the buying group.

17 Q Are you suggesting that the misrouted debit
18 tickets were routed to that branch for posting to that account?

19 MR. BERMAN: Objection.

20 A No, I'm not. It was just purely coincidence
21 that account was in Roosevelt Field. I believe central acti-
22 vities were located there. I can't believe a clerk would know
23 the existence of a Roosevelt Capital account in Roosevelt
24 Field.

25 Q Was it the practice of the bank to have debit

1
2 tickets physically leave the premises in which they were
3 credited?

4 A I don't know. I don't think so. I don't know
5 what the operating policies or practices were, at that time.
6 Certainly, in normal circumstances, which these were not be-
7 cause of the moving into New York City, they would remain in
8 the branch.

9 Q Would they go any further than your bookkeeping
10 department?

11 A No. I would think we would retain the debit
12 internally as a record of what took place in that account.

13 Q Then may I ask the basis for your speculation
14 that these tickets were misrouted, if they had been delivered
15 for processing, as you suggested, to the bookkeeping operation
16 in the Hanover Square branch? What other misrouting could
17 there have been?

18 A Well, again, I would speculate. If we had not
19 set up, May 14th, a bookkeeping operation for Hanover Square,
20 that activity may have been performed in Long Island as op-
21 posed to New York.

22 Q Perhaps I misunderstood, but I thought you said
23 earlier, you knew these debit tickets would have been process-
24 ed in the Hanover Square branch.

25 A Yes. At the end of the day, someone totalled

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2 up all the debit and credits and made them balance. We had
3 not set up all the operating activities in Hanover Square on
4 May 14th and it is possible this activity was performed on
5 Long Island, although I am not certain.

6 Q So, the bookkeeping operation may have taken
7 place in its location?

8 A I would say that may well be, but I'm not say-
9 ing that is the way it was. I am confident that at the end
10 of the day in the Hanover Square office, some reconciliation
11 of debits and credits was made, and that they were in balance.

12 Q Did you first become aware of the failure to
13 post the \$160,000 debit to the Roosevelt Capital Corporation
14 account on the occasion of the visit of Ray Pierson, on May
15 26th?

16 A That is correct.

17 Q Did you become aware of that failure by exam-
18 ining the ledger?

19 A I am certain I examined the ledger, because
20 when I was told the balance, I wanted to see how it was so
21 high.

22 Q Did you discuss that balance with Mr. Pierson?

23 A I'm sure I told Mr. Pierson the balance was
24 \$67,000. What else I told him, I couldn't remember right
25 now.

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2 MR. BRACHTEL: Please mark one sheet
3 "Plaintiffs' Exhibit 11 for Identification."

4 (Paper, above described, marked
5 "Plaintiffs' Exhibit 11 for Identification,"
6 as of this date.)

7 Q Mr. Mastronardo, I am handing you Plaintiffs'
8 Exhibit 11 for Identification, which is a Xerox copy of what
9 purports to be a printed form with some writing on it and
10 designated with the word "Debit" in the lower left-hand cor-
11 ner. Do you recall that document?

12 A It appears to be a form used by Franklin Na-
13 tional Bank. Yes.

14 What kind of a form is that?

15 A It appears to be a debit entry to the account
16 of Roosevelt Capital Corporation, in the amount of \$67,000,
17 resulting from the fact that Franklin National Bank, on May
18 26th, certified a check for Roosevelt Capital Corporation.

19 The banks, when they certify a check, debit
20 the account of the drawer of the check immediately, since
21 they consider it their prime obligation to the holder of the
22 check, to make payment when it is duly presented.

23 Q Does that document indicate the payee of the
24 check that was issued?

25 A Yes. It says: "Payable to Roosevelt Capital

1 Corporation, also, incidentally, is also the maker of the
2 check.
3

4 Q This form of debit ticket, if I can call it
5 that, differs in appearance from Plaintiffs' Exhibit 9 for
6 Identification?

7 A Yes.

8 Q Why is that?

9 A The debit, with respect to the certified check,
10 is a special purpose debit utilized only to cover the certi-
11 fication of checks. In fact, the language on the debit in-
12 dicates it is only used for that purpose.

13 Q Is this, then, that is, Plaintiffs' Exhibit 11
14 for Identification, an example of the kind of form or forms
15 which you say were completed on May 14th, upon the issuance
16 of the cashier's checks?

17 A I don't know which is Plaintiffs' 11.

18 Q This one (indicating)?

19 A No. That was not issued May 14th. It was
20 issued May 26th.

21 Q I'm sorry; you misunderstood my question.

22 Is this an example of the kind of form which
23 would have been prepared May 14th, upon the issuance of the
24 checks in amounts of \$118,000 and \$42,000, respectively?

25 MR. BERMAN: He just testified this is a

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special purpose.

MR. BRACHTL: I have asked if this is an example of the kind of form.

A Only if we certified a check on May 14th, which we did not.

Q This form differs from the kind that would be completed for a cashier's check?

A Yes. As I said, this is a special purpose form.

Q Mr. Mastronardo, looking at Plaintiffs' Exhibit 10 for Identification, the ledger of the Roosevelt Capital Corporation again, what is the first credit entry on that ledger?

It is dated May 15th and it appears to be \$160,000. That is all.

Mr. Mastronardo, can you tell me what that entry represents?

A By referring to the notes which I made, to which we referred earlier --

MR. BRACHTL: That would be Plaintiffs' Exhibits 2 and 3 for Identification.

THE WITNESS: (Continuing) -- it represents an official check in the amount of \$118,000 and, I believe, a United Film World check, in the amount of \$42,000, which were credited to Roosevelt

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Capital Corporation on May 14th, but not posted until May 15th, for unexplained reasons.

Q Now, Mr. Mastronardo, why is the entry preceded on the form by an entry dated May 15th and a statement of .00 balance (indicating)?

A I have no idea why they put that in. It appears to be meaningless.

Q Would that indicate that the account, prior to the posting of the \$160,000 credit you just described, had a zero balance?

A Well, there was no action and, therefore, it had a zero balance, because it did not exist, at least on the record.

Q What is the second credit entry to the account?

A There is a credit memorandum of \$187,000 on May 19th, according to the ledger sheet.

Q Can you tell me what that amount represents, or what the source of that credit is?

A I believe this represents the proceeds of Treasury bills which matured on May 14th and which were credited to the account of Roosevelt Capital Corporation; that is, the new account of Roosevelt Capital Corporation, on May 14th but never posted until later.

Q Why, if those had been credited to the account

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2 May 14th, would they not have been posted until May 19th,
3 as the ledger indicates?

4 A Well, it appears to me from reviewing all the
5 records that have been submitted at this deposition, that our
6 bookkeeping was in pretty poor shape at that time; that we
7 did not do things on time; that we had not set up proper
8 procedures to see to it entries were posted the same day they
9 were effected.

10 Q On May 19th, did you have doubts as to the good
11 faith of the people with whom you were doing business in this
12 account?

13 A It depends upon when I first learned of unfavor-
14 able information. It may have been May 19th. I don't recall
15 if that was the specific date, or earlier, or later.

16 Q Were you notified at the time of the posting of
17 \$187,000 to this account?

18 A No. I had assumed it was posted May 14th and
19 I had no reason to believe it was not posted May 14th; in
20 fact, I had made certain, at that time, that our branch of-
21 fice at Roosevelt Field had processed that credit entry.

22 Q How had you made certain?

23 A I telephoned the appropriate party at Roosevelt
24 Field office, and verified they were crediting the new account
25 of Roosevelt Capital and, undoubtedly, I gave them the new

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2 account number or else it would never have been credited to
3 this account.

4 Q Who was the appropriate party to whom you
5 spoke?

6 A I don't remember.

7 Q Would it have been Mr. Wallace?

8 A It may have been, but ordinarily he doesn't do
9 that himself. He was the vice president in charge of the
10 office. I may have spoken to him about it, but ordinarily
11 he wouldn't do that himself.

12 Q If you referred to the appropriate person a
13 request that the account for Roosevelt Capital Corporation,
14 at the Roosevelt Field office --

15 A No. Hanover Square office.

16 Q Which is the office on Long Island?

17 A Roosevelt Field; right.

18 Q Did you request of anyone at the Roosevelt
19 Field office, that the account of Roosevelt Capital Corpora-
20 tion, at the Roosevelt Field office be debited in the amount
21 of \$137,000?

22 A No. I asked that the proceeds of the matured
23 Treasury bills be credited to Roosevelt Capital Corporation
24 at Hanover Square; that is, the new Roosevelt Capital Cor-
25 poration.

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Q When you say "Treasury bills," were there Treasury bills in the account of Roosevelt Capital Corporation at Roosevelt Field?

A I presume that our bank had in its custody Treasury bills, probably in bearer form which, I believe, they are, which were maturing on May 14th, for which our bank collected the sum of \$187,000.

Q Would Treasury bills in the custody of your bank, appear as an item in the ledger or in the account of an entity?

A No^(t) -- It's not a cash item. Treasury bills are negotiable pieces of paper and they are not regarded as cash that would be credited to an account.

Q I see, so you requested to the Roosevelt Field office to redeem Treasury bills?

A No. My request was to make certain that Treasury bills, which were being redeemed that day, which were due and which would not have continued earning interest, the proceeds of those redeemed bills would be credited to the account of Roosevelt Capital Corporation at Hanover Square, pursuant to instructions from the owners.

Q Does Plaintiffs' Exhibit 5 for Identification represent or refer to the instructions to which you speak?

A Yes, it does.

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2 Q What is it in Plaintiffs' Exhibit 5 for Identifi-
3 cation, that acknowledges such instructions or makes such
4 instructions?

5 A The letter is signed by Sidney Tolmadge of the
6 law firm of Tolmadge & Harris, and it states that Mr. Tolmadge
7 is confirming to Mr. Stone, that he, Mr. Tolmadge, has today
8 instructed William Wallace, Jr., Vice President of the Frank-
9 lin National Bank, at Garden City, to release to Roosevelt
10 Capital Corporation, \$187,000, the proceeds of Treasury bills
11 which were on deposit with the Garden City branch of Franklin
12 National Bank, into the credit of the Roosevelt Capital Cor-
13 poration.

14 Q Does that letter distinguish between the account
15 of Roosevelt Capital Corporation at Garden City or at Hanover
16 Square?

17 A That letter, when it says to release to the
18 Roosevelt Capital Corporation \$187,000, means that the funds
19 are available to the so-called "new" Roosevelt Capital Cor-
20 poration account at Hanover Square.

21 Q Does your use of the adjective "new" refer to
22 the Roosevelt Capital Corporation or the account of Roosevelt
23 Capital Corporation?

24 A It refers to the Roosevelt Capital Corporation
25 created by the buying group. I don't know for a fact whether

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2 or not there was ever an old Roosevelt Capital Corporation,
3 that is, a corporation owned by the selling group.

4 Q But weren't the shares which you took custody
5 of and which we discussed earlier, the shares of such a cor-
6 poration and weren't those the subject of a sale ^{to} from the
7 ^{from} purchasing to the selling group?

8 A Yes. I hadn't thought about it.

9 Q You weren't aware of the shares?

10 MR. BERMAN: Objection.

11 A Not at this time. I wasn't aware.

12 MR. BERMAN: (To the witness) "At this time,"
13 meaning today?

14 THE WITNESS: Yes, today.

15 Did Mr. Tolmadge issue the instructions to
16 which he refers to Mr. Wallace?

17 A Yes, because I made certain that that did
18 happen.

19 Q Did Mr. Tolmadge give the instructions to Mr.
20 Wallace in your presence?

21 A He may have. I don't remember.

22 Q Was Mr. Wallace present on May 14th at Hanover
23 Square?

24 A No.

25 Q How did Mr. Tolmadge do it?

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2 A On the telephone.

3 Q Did you also speak to Mr. Wallace?

4 A I may have. I don't recall specifically, but
5 I did verify with some authorized individual at Garden City
6 or Roosevelt Field office, one in the same, that these in-
7 structions were given.

8 Q Was that letter, Plaintiffs' Exhibit 5 for Id-
9 entification, or a copy of it, ever delivered to you?

10 A I don't recall at this time.

11 Q Do you recall seeing or receiving it or examin-
12 ing it on May 14, 1964?

13 A Yes. I believe I would have examined this at
14 that time.

15 Q Did it bear the same markings and writings that
16 it now bears?

17 A Yes. I don't think it was ever changed.

18 Q Can you tell me why your name is scratched out
19 below the normal signature space and why the letterhead of
20 Franklin National Bank was stricken out, or scratched out?

21 A Well, undoubtedly, one of our secretaries typ-
22 ed this and the closing took place at the conference room,
23 third floor, which, undoubtedly, is where our International
24 Banking Department is located. The letterhead is that of the
25 International Banking Department and the secretary who typed

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2 this is not aware she should have typed it on blank, white
3 stationery instead of the stationery of the banking depart-
4 ment. She also prepared the letter for my signature, which
5 is incorrect since both the letterhead and the place where
6 I would have signed, it crossed out.

7 Q Had you dictated that letter to a Franklin
8 National Bank secretary?

9 A I don't believe so.

10 Q Had you instructed any secretary or clerical
11 employee to prepare that letter?

12 A Yes. Since I was the only representative of
13 the bank at the closing, I requested the secretary to type
14 this letter.

15 Q Did you prepare any documents or make any book
16 entries to represent the transfer or crediting to the Roos-
17 evelt Capital account of the \$187,000?

18 A No. That would have been done at the Roosevelt
19 Field or Garden City office by whoever had redeemed the
20 bill. I did make certain that credit entry reflected the
21 account of the new Roosevelt Capital Corporation at Hanover
22 Square branch, even though it was posted later, and finally
23 did arrive on May 19th for credit to the account.

24 Q Now, if the credit, or credit advice, or cre-
25 dit information was prepared at the Roosevelt Field office,

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2 instructing that a credit be posted to the account of Roose-
3 velt Capital Corporation at the Hanover Square office, would
4 a document have physically been delivered from the Roosevelt
5 Field office to the Hanover Square office?

6 A The only document would be a credit advice,
7 which obviously did not arrive, since it was credited to the
8 account.

9 Q Do you recall receiving such a credit advice?

10 A Not personally. It is not my function to get
11 involved in bookkeeping.

12 Q Were you alerted or made aware of such a re-
13 ceipt by the employees?

14 A No. I was satisfied, after speaking to the
15 person at Roosevelt Field that this was done and went on to
16 other business. I had no reason to believe this was not done.

17 Q Were you aware or were you in any way notified
18 of the \$160,000 credit on May 15th, to the account of Roose-
19 velt Capital Corporation?

20 A Under ordinary circumstances, the bookkeeping
21 department does notify the appropriate account officer of
22 every entry that takes place, or the contrary is true. The
23 officer is not notified unless there is a special set of
24 circumstances.

25 Q Then you were not notified of that \$160,000

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2 credit?

3 A No. I was satisfied the entries were prepared
4 and processed and did not spend the day looking to see it was
5 done. I assumed it was done, as it should have been.

6 Q When did you first learn or hear of Roosevelt
7 Capital Corporation?

8 A On the evening of May 13, 1964.

9 Q During your indoctrination period in the Roose-
10 velt Field office, as a new employee of Franklin National
11 Bank, did you have occasion to work with Mr. William Wallace?

12 A No. He ran the branch office as a branch of-
13 ficer. I was in the branch loan administration department,
14 which was separate and distinct, that department having the
15 over-all responsibility for supervision of credit extended
16 by all the branches on Long Island. Certainly I did meet
17 Mr. Wallace. He was in the same building as I was located,
18 and I am certain I met him several or more times while there.

19 Q When you examined memoranda from the branches
20 of the bank regarding proposed loans or credit extensions,
21 did you examine such memoranda for proposed loans issued by
22 the Roosevelt Field office?

23 A It may have. These were after the fact and
24 the purpose of my presence there was to become acquainted
25 with the general lending practices and procedures with

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2 extending credit in the Franklin National Bank and also to
3 get to know the people there.

4 Q Did you have occasion during that indoctrina-
5 tion period, to examine memoranda regarding credit to Roose-
6 velt Capital Corporation?

7 A I couldn't say. It made absolutely no impres-
8 sion on me if I did, because I never knew the name or record,
9 prior to May 13, 1964 of Roosevelt Capital Corporation.

10 Q As a commercial loan officer of Irving Trust
11 Company, did you ever have occasion to transact business with
12 Samuel Lonnie Olanow?

13 A Never heard of him before May 13, 1964.

14 Q Had you done business, prior to May 14, 1964,
15 with Samuel Stone?

16 A Never.

17 Q Ray Pierson?

18 A Never.

19 Q Peter Francis Crosby?

20 A Never.

21 Q Stuart Wallen?

22 A Never.

23 Q Do you recall how you first heard of, or
24 learned of Roosevelt Capital Corporation, on May 13, 1964?

25 A Yes. On May 13th, our bank, Franklin National

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2 Bank, gave a reception at Hanover Square and at that recep-
3 tion, I met Lonnie Olanow he, having been introduced to me,
4 by William B. Wallace.

5 Q Was he identified to you by Mr. Wallace, other
6 than by name; that is, by profession, by relationship to
7 an account or any other identifying way?

8 A Yes. I'm sure Mr. Wallace more than introduced
9 Mr. Olanow to me. It was for the purpose of our developing
10 an account or some business from Mr. Olanow, in his prospec-
11 tive purchase of Roosevelt Capital.

12 Q When the \$187,000 at the Roosevelt Field branch
13 was credited to the account of Roosevelt Capital Corporation
14 at the Hanover Square office, was that a transfer of a bal-
15 ance or was it the application of funds from the redemption
16 of the Treasury bills?

17 A It was the application of funds from the re-
18 demption of Treasury bills which, undoubtedly, was in the
19 form of check from a brokerage firm or whoever did redeem
20 the Treasury bills on behalf of the Government.

21 Q Have you ever been involved in the mechanics
22 of the redemption of Treasury bills?

23 A All any lending officer would have to do would
24 be to give the bills to the security department and let them
25 execute whatever is required.

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2 Q Would that redemption or execution be completed
3 within a day?

4 A I would think so. I don't know. I never per-
5 sonally have done so, but I don't know. I would assume so.
6 The Government doesn't pay interest after maturity.

7 Q When you met Mr. Olanow on the 13th of May,
8 did you have a conversation with him?

9 A Yes, I did.

10 Q Do you recall that conversation?

11 A I think it was sort of bland, a social, general
12 nature; nothing very long.

13 Q Did he make any request of you, at that time?

14 A Yes. Asked if we would make available to him,
15 the following morning, a conference room for the closing in
16 question.

17 Q What closing is that specifically?

18 A The acquisition or purchase of Roosevelt
19 Capital Corporation.

20 Q Did he describe to you whether that transaction
21 was to be an acquisition of shares, or the purchase of assets?

22 A No, he did not describe anything to me at that
23 time. The conversation, as I said, was of a general nature.
24 We did not get involved in the specifications.

25 Q Was Mr. Wallace present when Mr. Olanow made

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2 the request to use the conference room?

3 A I don't know. I don't recall. It wasn't very
4 important at that time, but he may have.

5 Q You have indicated that the conference room is
6 located on the third floor of the bank. Where was your desk
7 or office located?

8 A On the main banking floor, the street level.

9 Q Was this an office with walls or enclosures
10 or a desk?

11 A On the platform, which is customary, in com-
12 mercial banks.

13 Q Did you accede to Mr. Olanow's request for the
14 conference room?

15 A Yes, I did.

16 Q Did the meeting take place in the conference
17 room on May 14, 1964?

18 A Yes, it did.

19 Q What time did it commence?

20 A In the morning. I don't recall the specific
21 time.

22 Q Did you attend the meeting?

23 A At certain times. I did not attend the entire
24 meeting. It was not my intention to be present. I was call-
25 ed in, as I mentioned previously.

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2 Q Did you escort those who came to attend the
3 meeting, into the conference room?

4 A I probably escorted the first group. I don't
5 know if I did, or asked the guard to do so.

6 Q Who attended this conference?

7 MR. BERMAN: Objection. That question has
8 been asked and answered a long time ago.

9 A Lonnie Olanow and Ray Pierson and Samuel Stone
10 and Mr. Tolmadge and others. I don't recall all their names.

11 Q You have mentioned the people arrived in sev-
12 eral different groups. Did Mr. Tolmadge arrive at the same
13 time as Messrs. Pierson, Olanow and Stone did?

14 A I don't remember.

15 Q In what manner did you participate in the meet-
16 ing that took place in the conference room?

17 A Well, some time after all the parties had
18 gathered there and had some discussion, one or more repre-
19 sentatives of the buying group came down to the main floor
20 and asked if I might be of assistance to them, since they
21 had run into some difficulty in accomplishing the closing.

22 Q Did he describe that difficulty to you?

23 A Yes. The buyers were from out of town and had
24 failed, for one reason or another, which I don't remember,
25 to bring with them certified checks and the sellers desired

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2 certified checks.

3 Q What kind of assistance were you asked to give?

4 A I was asked if we would issue an official check
5 and was assured that that official check would be covered by
6 cash that was available within our bank that day.

7 Q Who made this request of you?

8 A I believe it was Ray Pierson and Lonnie Olanow,
9 but I'm not sure if it was both or just one of them.

10 Q Where, in the bank, was this request made to
11 you?

12 A It was made on the main banking floor, when the
13 problem was first presented to me.

14 Q Were you advised of the consequences or pos-
15 sible consequences of the buyer's inability to tender certi-
16 fied checks?

17 A None other than the fact that ^IH was led to be-
18 lieve the closing could not take place; that it would have
19 to be postponed.

20 Q Were you advised what cash in the bank was
21 available to support the cashier's checks that were requested?

22 A The \$180,000 from the redemption of the Treasury
23 bills, which was being made that day.

24 Q Did Mr. Pierson or Mr. Olanow or both of them
25 or either of them explain to you why that amount was available

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2 to support the cashier's checks?

3 A No, other than the fact it was there and was
4 available to cover those checks.

5 Q Where was it at that time?

6 A The Treasury bills, with the Garden City or
7 Roosevelt Field office, and were redeemed by them and the
8 proceeds were available at that office.

9 Q What did you do in respect to that request?

10 A Ultimately, agreed to it.

11 Q What did you do, immediately?

12 A I acquainted myself, undoubtedly, with the
13 basic facts and situation and returned to the conference room
14 on the third floor.

15 Q When you say you "returned to the conference
16 room" had you been there before?

17 A I brought the people up there the first time.
18 I made sure there was no one else in the room, that it was
19 free for that purpose.

20 Q You said you acquainted yourself with the facts.
21 In what manner did you acquaint yourself with these particular
22 facts?

23 A I asked questions with regard to the status of
24 the situation from the principals, and was told the basic
25 problem.

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Q Which principals?

A I don't recall specifically, but I would say representatives of the buyers and the sellers.

Q Who was present representing the sellers?

A Mr. Tolmadge, certainly, and I don't recall specifically what other members of the selling group were there, but there were others.

Q And you discussed with them the availability of the \$187,000?

A Yes, I certainly did, because I apparently made certain that Mr. Tolmadge had instructed Mr. Wallace of our bank to release the \$187,000.

MR. BRACHTL: I would like to take a five minute recess.

(RECESS)

* * *

All right; let's resume.

Q What ^{were} were your discussion with the members of the buying and selling groups?

A How we could resolve their problem; that is, to effect the closing that day in a way which would be suitable to all parties.

Q What was the resolution or the decision?

A The resolution would be the sellers would make

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2 available to the buyers \$187,000 representing the proceeds of
3 the matured Treasury bills which would, in turn, enable me to
4 issue the official checks in question, the \$118,000 and the
5 \$42,000 checks.

6 Q Was this then to be a loan from the selling
7 group to the buying group?

8 A No loan was ever discussed or contemplated.

9 Q You just said that the selling group was to
10 make available \$187,000 to the buying group for the purchase.
11 How were they to make that available?

12 A Everything was to be done simultaneously. This
13 was a practical solution to a business problem, an expedient
14 one that was made on my part with the underlying assumption
15 both parties were acting in good faith and, had that been so,
16 never would have caused a ripple.

17 Q I gather that the resolution that was arrived
18 at was to your knowledge not completed by the parties prior
19 to the closing negotiations?

20 A Not to my knowledge. I had no such knowledge.

21 Q Now, you have indicated that had the parties
22 carried out their obligations in good faith, we would not have
23 a problem today. What was your understanding of the way or
24 the obligations of the respective parties to the transaction
25 as it was contemplated?

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2 A My only assumption was we were dealing with
3 men of integrity and that they would fulfill their commit-
4 ments.

5 Q What were those commitments, as you understood
6 them?

7 A The commitments? Whatever agreement that they
8 had arrived to among themselves. I had no understanding of
9 the nature of those commitments.

10 Q Without a knowledge of the commitments or the
11 nature of the commitments by the parties to this transaction,
12 on what do you base your assumption that they did not fulfill
13 those obligations in good faith?

14 A Well, by reason of the fact we are here today.
15 Apparently, one of the parties took advantage of the purchase
16 for their personal gain. I don't know that for a fact.

17 Q Do you mean one of the parties took advantage
18 of the transaction on the day of the closing, for their per-
19 sonal gain?

20 A No.

21 Q In what manner do you mean that?

22 A I don't know, but I understand there was some
23 criminal proceedings by your office. I don't know the pre-
24 cise nature of them and you had asked me once to testify at
25 those proceedings, but I was not needed.

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2 Q Did Mr. Pierson or Mr. Olanow or both of them,
3 in requesting that you engage in the transaction that then
4 took place, specify why they were not able to provide the
5 cashier's or certified checks which had been requested?

6 A No, other than the fact that they did not have
7 checks which were certified, I was led to believe they had
8 checks in their possession, but not certified ones.

9 Q Did they indicate to you on which banks they
10 were drawn?

11 A I don't recall that being the case. That may
12 have been, but I don't remember.

13 Q Did you pursue with them the possibility that
14 your bank might honor those checks?

15 MR. BERMAN: "Pursue" implies somebody
16 initiated that. You mean was the suggestion
17 ever discussed by anybody? You are implying,
18 it was distinctly made.

19 MR. BRACHTL: I have asked if the witness
20 pursued that.

21 MR. BERMAN: Pursued?

22 MR. BRACHTL: Yes.

23 MR. BERMAN: That word implies it was
24 discussed and pursued further. No such testimony.

25 A I never initiated or pursued that suggestion

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2 or discussed it in any way.

3 Q Was there an explanation of why the purchasers
4 were unable that day to have their checks certified, if they
5 had such checks?

6 A If the checks were drawn on an out-of-town
7 bank which, I presume, they were, they would have to physic-
8 ally present them there for certification.

9 Q Is the assumption you are now stating, the
10 assumption you made then?

11 A Yes. I was led to believe these people, the
12 buyers, were from out of town, they had not set up any loca-
13 tion in New York and that was the problem.

14 Was this, at that time, your assumption or was
15 this assumption recited to you?

16 A I would say it was recited to me.

17 Q At that time, did they indicate to you where
18 their banks were located?

19 I don't recall specifically if they told me at
20 that time, but I do recall asking them for bank references,
21 since we were establishing an account for the new Roosevelt
22 Capital Corporation and I deemed it essential, particularly
23 with a closely held company, to get bank references.

24 Q Did you regard the Roosevelt Capital Corporation
25 as a closely held corporation or company?

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2 A Yes, because it was apparently -- because the
3 principals were acquiring the company and there weren't that
4 many, in number.

5 Q What did you do in response to the request for
6 the issuance of the checks, after discussing the request
7 with the members of the buying and selling groups?

8 A It was decided we could resolve the problem, in
9 the sellers authorized the release of the redeemed Treasury
10 bills; that the buyers give us the appropriate corporate re-
11 solutions indicating who, on behalf of any corporation, was
12 authorized to act, and the buyers give us instructions to
13 issue checks.

14 Q You referred to the "new" corporation. Did you
15 understand there to be taken place in your meeting room, the
16 formation of a new corporation?

17 A I didn't know it was created that day. No,
18 not necessarily. There may have been a presently existing
19 one, for all I knew.

20 Q What was your understanding, at that time?
21 Was it the subject for a closing?

22 A Well, cash was being passed and the stock or
23 collateral of the corporation was being purchased.

24 Q Did you understand that stock to be the stock
25 of Roosevelt Capital Corporation?

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2 A Yes. It was stock of Roosevelt Capital Corpora-
3 tion, delivered to me, as we brought out before, for safe-
4 keeping.

5 Q Did you understand that Roosevelt Capital Cor-
6 poration had an account relationship with Franklin National
7 Bank?

8 A Yes, certainly.

9 Q By whom were you apprised of that fact?

10 A By Mr. Wallace of our office at Roosevelt
11 Field.

12 Q When did he apprise you of the existence of
13 that account?

14 A I believe he told me that, the evening preced-
15 ing the closing, May 13th.

16 Q Did Mr. Wallace, on May 14th, attribute the
17 ownership of the \$187,000 in Treasury bills to Roosevelt
18 Capital Corporation?

19 A Mr. Wallace, or his subordinates, assured me
20 that Treasury bills, which were redeemed, were the property
21 of the selling corporation and were available upon the auth-
22 ority of Mr. Tolmadge to the buying corporation on that day,
23 May 14th.

24 Q What were the names of the selling and buying
25 groups?

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2 A I believe they were identical, although I am
3 not certain whether they were exactly the same.

4 Q And what do you understand, at that time, were
5 these corporations buying and selling, respectively?

6 A Ownership or the stock interest in the corpor-
7 ation.

8 Q Now, in what manner was the problem to be
9 solved? What acts were to be done, or undertaken by you as
10 representative of the bank, to assist the buying and selling
11 groups in the transaction?

12 A Namely, that the \$187,000 would be made avail-
13 able from the selling to the buying group; that they were
14 two, distinct corporations, with two sets of officers or
15 individuals, which could act on behalf of them. Secondly,
16 that the new corporation empowered certain officials to act
17 on its behalf with regard to its relationship to our bank
18 and, accordingly, corporate resolutions were completed on our
19 form at the closing.

20 Letter instructions were given to us by the
21 duly authorized officer or officers of the new Roosevelt
22 Capital Corporation, to issue the official checks in
23 question.

24 Q Was an account opened at this branch; that
25 is, at the Hanover Square branch for the Roosevelt Capital

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2 Corporation, on May 11th?

3 A Yes, it was and as far as I was concerned, it
4 was a new corporation, a separate entity, not at all related
5 to the old corporation, even though the names were identical
6 or similar.

7 Q As the assistant cashier at Hanover Square,
8 what documents would you normally require, upon the opening
9 of a corporation account to be maintained by the bank?

10 A Corporate resolutions and signature cards.

11 Q Would you require a copy of the certificate of
12 incorporation?

13 A No.

14 Q Would you require a statement or affidavit re-
15 garding the date of incorporation?

16 A No.

17 MR. BERMAN: Are you talking about to open
18 an account or getting a loan?

19 MR. BRACHTL: To open an account.

20 THE WITNESS: No.

21 Q How would you ascertain a corporation exists
22 in the name given for the new account?

23 A They key there is to know your customers;
24 know the people with whom you are dealing. I don't think any
25 bank searches the record to make certain it is duly

1 incorporated and meets all the requirements of law.

2 Q On the corporate resolution forms, which you do
3 require, do you require affixing of the corporate seal?

4 A We do; but we do ask for it.

5 Q Do you always ask for it?

6 A The form provides for it, so we ask for it.
7 Whether it has legal significance, I couldn't say. I doubt
8 it.
9

10 Q Did you ask the seal be affixed to corporate
11 resolutions, in this instance?

12 A If they were there, I asked for it; if not, I
13 didn't. I don't remember.

14 Was it your understanding at that time that a
15 corporation was purchasing the shares of another corporation?

16 A No. I wouldn't -- That was not my understand-
17 ing. Wait a minute. Let me think that through. I really
18 don't know who was acquiring the company. All I know, is the
19 company was acquired Roosevelt Capital Corporation, or al-
20 ready existed, I don't know, and we had duly authorized offi-
21 cers of the company execute the resolutions.

22 I never saw the agreement between the buyer and
23 the seller, so I don't know.

24 Q What was the first step that you took to effect
25 the resolution of the problem of the buyers and sellers?

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2 A We said how can we solve this problem and I
3 outlined what we required, namely: what I discussed before.
4 All those documents were executed, were pledged before all
5 the parties involved and the checks were issued and the money
6 passed.

7 Q When you say that you advised them what docu-
8 ments were required, which you enumerated --

9 A Yes.

10 Q (Continuing) -- would you be explicit as to
11 the reason they were required, for what? What was the trans-
12 action which would require those documents?

13 A What was taking place, was the proceeds of the
14 Treasury bills, which had been owned by the sellers, were
15 being made available to the buyers. Forgetting corporate
16 titles, the sellers authorized that. The buyers, on the other
17 hand, designated who was to act on their behalf, and if you
18 had the appropriate resolutions and letter instructions to us,
19 to issue the checks.

20 As I said before, this was a pragmatic resolu-
21 tion of a business problem, made with the underlying assump-
22 tion on my part, all parties were acting in good faith.

23 Q Specifically, did Mr. Olanow and Mr. Pierson
24 and Mr. Tolmadge engage in the discussion of the resolution
25 of this problem?

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2 A I would say yes. I don't recall precisely what
3 was said to which party, but my recollection is this took
4 place in the presence of all and all had the same understand-
5 ing. Whether that was true, I don't know, but that was my
6 impression.

7 Q Who did Mr. Tolmadge represent?

8 A The sellers, according to what I was told.

9 Q When you spoke to Mr. Wallace, or whatever ap-
10 propriate official you spoke to at the Roosevelt Field branch,
11 regarding the availability of the proceeds of the Treasury
12 bills, did you inquire as to whether there were Treasury
13 bills held for the account of Mr. Tolmadge?

14 No. All I inquired was that Mr. Tolmadge had
15 the authority on behalf of the selling corporation to release
16 to me, and when I say "to me," I mean to the bank, to cover
17 those checks, the proceeds of the redeemed bills.

18 Q What, mechanically, took place?

19 I picked up the telephone and called our Roose-
20 velt field office and verified the existence of the Treasury
21 bills, that the funds were available and, in fact, were being
22 credited May 14th to the account of the new Roosevelt Capital
23 Corporation.

24 Q Was the letter, Plaintiffs' Exhibit 5 for Ident-
25 tification, prepared before or after you made that telephone

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2 call?

3 A I don't recall. I would say certainly I was
4 concerned to speak to Mr. Wallace; in other words, I had
5 assumed Mr. Tolmadge contacted Mr. Wallace on it, then I
6 spoke with him or his subordinate and then I verified this
7 was true.

8 Q After completing the telephone call, what was
9 your next step in the transaction?

10 A Again, I don't recall the precise chronological
11 order of events, but I did obtain corporate resolutions for
12 the new Roosevelt Capital Corporation and a letter, which I
13 believe was ultimately signed by Mr. Pierson on behalf of
14 Roosevelt Capital Corporation, authorizing the issue of the
15 two official checks in question.

16 MR. BRACHT: Will the Reporter please
17 mark a piece of paper "Plaintiffs' Exhibit 12
18 for Identification".

19 (Paper, above described, marked
20 "Plaintiffs' Exhibit 12 for Identification,"
21 as of this date.)

22 Will the Reporter please
23 mark letter dated May 14, 1964, "Plaintiffs'
24 Exhibit 13 for Identification."

25 (Paper, above described, marked

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"Plaintiffs' Exhibit 13 for Identification,"

as of this date.'

Q Mr. Mastronardo, I am handing you Plaintiffs' Exhibit 12 for Identification. Is that a copy of the corporate resolutions received by the bank on that day?

A Yes, it is.

Q Who are the signatories?

A Stuart Wallen, Ray Pierson and Samuel Stone, and it is dated May 14, 1964.

Q I am now handing you Plaintiffs' Exhibit 13 for Identification. Is that a copy of the letter of instructions for the issuance of two checks by Mr. Pierson?

Yes, it is.

Q Mr. Mastronardo, you have explained that while as a matter of bank practice, if I can paraphrase your testimony, you would recheck the records to ascertain the existence of a corporation, but would rely generally on your knowledge of the people with whom you are dealing or doing business, what knowledge did you have of the officers or purported officers of Roosevelt Capital Corporation, indicated in this corporate resolution (indicating)?

MR. BERMAN: Objection as to form.

A I would say I was relying on the sellers who, according to my knowledge, was customers of our bank for some

Mr. Mastronardo

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time and in whom our bank had a good deal of confidence.

I would say, it would be extraordinary if any bank, at any time, went to verify from records that a corporation was properly incorporated.

Q Is it possible that one reason that no such inquiry would have been made here was Roosevelt Capital Corporation, as an entity, had been already, for some time, an account of the bank?

A No. No bearing whatsoever. We know of cases where corporations were set up in different states with similar names.

Q Mr. Mastronardo, Plaintiffs' Exhibit 13 for Identification, the letter from Mr. Pierson, recites --

MR. BERMAN: Objection; a letter signed by Mr. Pierson.

MR. BRACHTL: The letter bearing the signature of Ray Pierson.

MR. BERMAN: On behalf of Roosevelt Capital Corporation.

MR. BRACHTL: It doesn't recite that at all, I'm afraid.

Q (Continuing) -- states: "Please issue two official checks over order of Sidney Tolmadge in amounts of \$42,000 and \$118,000 for delivery to him." This letter does

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2 not state when such delivery is to be made. In what manner
3 were you instructed, or how were you instructed as to the
4 time, date and place of delivery?

5 A Ray Pierson, in signing this letter on behalf
6 of Roosevelt Capital Corporation, as he was duly authorized,
7 instructed us at the closing to deliver to Mr. Tolmadge the
8 two checks in question.

9 Q Now, had you received the shares of stock to
10 which we referred earlier, before or after receiving that
11 letter?

12 A I would say after. I got this from recollec-
13 tion and it was of no significance to me at the time, whether
14 I ever got those securities.

15 Q Did you receive the securities before or after
16 the tender of the checks which ultimately were issued by the
17 bank?

18 A I would say most likely after, but as I said
19 before, I really don't know, because it was of no consequence
20 to me, whether or not I received the securities.

21 Q If the securities which you received, were,
22 as you have testified, virtually all of the securities of
23 Roosevelt Capital Corporation, and you received those from
24 the selling group after the receipt of the corporate resolu-
25 tion and the letter of instructions (indicating), how could

1 the purported officers of Roosevelt Capital Corporation, en-
2 umerated from the corporate resolution, be such officers?
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4 MR. BERMAN: Objection as to form. You are
5 misquoting the testimony. I don't believe there
6 was any testimony that the certificates, per se,
7 were handed by the selling shareholders to Mr.
8 Mastronardo. For all we know, it might have been
9 on the table.

10 MR. BRACHTL: Perhaps I misunderstood.
11 Let's go back to this.

12 Q How did you receive the certificates?

13 A They were physically delivered to me ultimately,
14 by whom I don't recall, the specifics who put them in my
15 hands, and I don't recall the chronological order of events.
16 To me it was not important. Certificates were incidental
17 and an accommodation on our part and, again, the whole trans-
18 action was a pragmatic approach to a business problem and
19 seemed to us that all parties having a legitimate interest
20 were doing this.

21 Q Mr. Mastronardo, would you distinguish the
22 basic nature of the certificates representing shares of
23 Roosevelt Capital Corporation stock and the Treasury bills,
24 which were held for Roosevelt Capital Corporation?

25 A I would say there is a difference in

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2 marketability.

3 Q What is the difference in nature?

4 MR. BERMAN: Objection.

5 A One is the obligation of the United States
6 Government, which is in form of being a short term investment,
7 and the other is a security, for which there is no public
8 market to my knowledge, and not readily negotiable.

9 Q Is the Treasury bill an obligation of the
10 United States to pay money?

11 A Yes.

12 Q Are the Roosevelt Capital Corporation shares
13 an obligation?

14 No.

15 Q What are the shares?

16 A Evidence of ownership or equity certificates.
17 You point out very quickly, one is a debt instrument; the
18 other, an equity instrument.

19 Q As a commercial loan officer at Irving Trust
20 and the Franklin National Bank, did you ever have occasion to
21 loan money to a corporation for the purpose of permitting
22 the corporation or for the purchase of its own shares?

23 A Not to my knowledge.

24 Q Would you have authorized such a loan?

25 MR. BERMAN: Objection as to form.

Re: Bro. W. J. W. J.

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A Would I have authorized --

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MR. BERMAN: Do you want the witness to speculate now what he would have done at Irving Trust?

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Q During your tenure at the Irving Trust Company and at the Franklin National Bank, would you have done that?

8

A Would you repeat the question?

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Q As a commercial loan officer, would you have authorized a loan to a corporation to finance a corporation's purchase of its own shares?

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A For treasury stock. Provided there was nothing unlawful about the act, which I would check out. I see no reason why a corporation could not borrow to buy back its own shares for treasury stock.

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The fact that you raise a question, makes me wonder about its being legal.

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MR. BERMAN: Don't speculate about that.

Once you received the letter of instruction and the corporate resolution and had contacted the Roosevelt Field office, what was then done to consummate the transaction?

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A The deed was done. The checks exchanged hands, precisely from whom to whom I don't recall; but that's what took place.

Q Were you present?

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2 A I may have been. I probably was. I signed the
3 checks, so I probably was.

4 Q Was any other business conducted, in any other
5 transactions, in the room during your presence?

6 A Not to my knowledge.

7 MR. BERMAN: When you say "transactions," you
8 mean purchases and sales?

9 MR. BRACHTL: Yes. Anything other than the
10 sale in which these checks were used.

11 THE WITNESS: I do recall some talk about
12 seller's buying back assets of the corporate stock,
13 but the precise nature of which I don't know.

14 Would that have related to the \$118,000 check?

15 A Yes.

16 Q In what manner was your understanding?

17 A To my understanding, the sellers acquired cer-
18 tain assets of the corporation being sold and paid for that
19 purchase, by endorsing the official check we had issued, to
20 Sidney Colmadge, back to the buying corporation.

21 Q Mr. Mastronardo, if the \$187,000 in Treasury
22 bills was properly held for the account of Roosevelt Capital
23 Corporation --

24 A Yes.

25 Q (Continuing) -- and the proceeds of the Treasury

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2 bills to be applied to the obligation of the purchasing group
3 in your bank, wasn't the effect of that transaction to permit
4 or to facilitate the purchase of the corporation by the pur-
5 chasing group, with the assets of the corporation?

6 MR. BERMAN: Objection.

7 A I don't know what other negotiations or discus-
8 sions existed between the parties.

9 Q Well, was it your understanding at the time that
10 the source of the problem was the purchaser's inability to
11 make payment to the sellers?

12 MR. BERMAN: Objection.

13 A Yes.

14 MR. BERMAN: That is a characterization.
15 They had checks, but not certified checks. That
16 is his testimony.

17 MR. BRACHTL: I have asked the source of
18 the transaction.

19 MR. BERMAN: It might imply something else.
20 The testimony was clear.

21 Q Was it your testimony that the purchasers were
22 unable to make payment for the purchase in the manner in which
23 the sellers required, namely, they did not have certified
24 checks, and, therefore, the purpose of the transaction which
25 did take place involving you and Franklin National Bank, was

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2 to provide a means of payment acceptable to the sellers?

3 A Yes, to provide means of payment acceptable to
4 seller and provide the bank with payment simultaneously with
5 those checks.

6 Q If the bank provided the sellers with the money
7 to pay for those shares, in what manner did the purchasers
8 provide the bank with the money to issue the checks?

9 A As I said before, the sellers authorized the
10 release of the matured Treasury bills to the buyer. Having
11 accepted that, the buyers were in a position to pay for the
12 issuance of the official checks. There was no obligation on
13 the part of the buyers to the bank, other than to pay us for
14 the checks we then and there issued at that time.

15 Q Were other accounts opened on May 14th by mem-
16 bers of the group?

17 A Other accounts were opened. I don't recollect
18 May 14th or 15th, but others were opened.

19 Q I ask you to look at Plaintiffs' Exhibits 2 and
20 3 for identification. Do these refresh your recollection as
21 to what accounts were opened and when?

22 A Not necessarily. Those exhibits, I believe,
23 just indicate the items that went through the various ac-
24 counts, but let me look. Yes. On May 14th, an account was
25 opened for United Film World with an initial deposit of

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2 \$80,000. An account was subsequently opened for Trans-World
3 Theatricals, Inc., on a date which is not indicated in my
4 notes here, and an account was also opened for Contractors
5 Guild.

6 MR. BRACHTEL: Do you have both Plaintiffs'
7 Exhibits 2 and 3 for Identification there?

8 MR. BERMAN: Let me see.

9 THE WITNESS: (Handing papers to counsel.)

10 Yes, I have both. Yes, I do, now.

11 Q Were there, to your knowledge, any other ac-
12 counts opened following the transaction which you described,
13 other than United Film World, Trans-World Theatricals, Inc.
14 and Contractors Guild?

15 A To my knowledge, those were the only accounts,
16 but I can't say today with certainty, but I believe that it
17 be the case.

18 Q Did you open these accounts?

19 A Yes. I obtained the appropriate documents to
20 support the opening of these accounts.

21 Q By whom were they opened, turning first to
22 United Film World?

23 A I processed the papers required to open these
24 accounts. We obtained the required signature cards and the
25 corporate resolutions and the initial deposit.

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Q Were these accounts, or which ones of them were opened by persons who were principals in the transaction involving Roosevelt Capital Corporation?

A I would have to look at the resolutions to refresh my recollection. I believe some, if not all, had different principals.

Q Were these accounts opened or brought into the bank as an inducement to you to engage in the transaction earlier described?

A Never.

Q Regarding Roosevelt Capital Corporation?

A Not so.

MR. BERMAN: Mr. Brachtl, did you ask whether they were discussed before the transaction?

THE WITNESS: They were never discussed prior to, or during the transaction.

Q To your knowledge, do your notes indicate the issuance of checks or receipt of checks in these accounts, from or to the Roosevelt Capital Corporation account?

A Yes, they do, and I believe I went over this in considerable detail in my prior testimony.

Q If you will look at Plaintiffs' Exhibit 10 for Identification, the ledger of Roosevelt Capital Corporation, you earlier described, I believe, the contents of the initial

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\$160,000 credit entry?

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A Right.

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Q Can you relate what the components of that entry were; that is to say, if they were checks, from what account were they?

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A I know I went into this in considerable detail the last time I gave testimony. I believe, \$168,000 represents or consists of \$118,000 official check and another check of United Film World, and the amount of \$42,000 which was endorsed by Ray Pierson back to Roosevelt Capital Corporation.

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MR. BERMAN: Maybe we can shorten this a little. You have the entire testimony. If you would like to state into the record what that reflects, I will stipulate to that and we can go on from there.

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MR. BRACHTL: Off the record.

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(Discussion off the record)

Mr. Mastronardo, earlier you testified to doubt as to the good will with which the members of the purchasing group participated in the transaction and you alluded to information you received about them.

Can you please describe for us all the efforts you made to obtain such information?

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2 A I asked both Pierson and Olanow for personal
3 bank references which they did provide and I also checked
4 with those banks personally by telephone and inquired of a
5 credit agency, as to whether they had on file any information
6 on these two individuals.

7 It developed, one of the agencies had a report
8 on Mr. Olanow.

9 Q Which agency did you inquire of?

10 A We probably did a general check of all the
11 Proudfoot's, Bishop's and Retail Credit. One of them had a
12 report on Olanow.

13 Q When did you make these telephone calls?

14 Well, I don't recall the precise date, but I
15 would think it would be available from the files.

16 Q What files would those be ?

17 A The files of the Roosevelt Capital Corporation.

18 Q Would these be separate credit files?

19 A No, the same file.

20 Q The file in which the ledger is?

21 A No. The ledger is maintained by the bookkeeping
22 department.

23 Q Who would be responsible for the maintenance
24 of the files?

25 MR. BERMAN: Now?

MR. BRAGHTL: At that time.

A I would give the material to my secretary and she would file it in the cabinet.

Q In other words, having introduced the account to the bank, or being responsible for its introduction, you would have been responsible for maintaining the file?

A For seeing to it that one was set up, because again anyone else being asked a question, would want to know how it came to the bank, who the principals were, what type of business.

Q While in the employ of the bank, and after May, 1964, were you ever called upon in any court of law, in any legal proceeding, to produce those files?

A The only time --

MR. BERMAN: I just want to make a distinction whether or not you were referring to Franklin National Bank or Mr. Mastronardo?

MR. BRAGHTL: Mr. Mastronardo, as an agent and employee of the Franklin National Bank.

THE WITNESS: To my knowledge, files were reproduced at your request. As far as I know, not for anybody else.

Q That is by the request of the United States Attorney?

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2 A Yes, and perhaps Mr. Todol. I really don't
3 know.

4 MR. BERMAN: Off the record.

5 (Discussion off the record)

6 Q In the course of your inquiry, what information
7 did you learn about members of the purchasing group?

8 A That the United States had commenced criminal
9 proceedings against them and I believe they were convicted
10 or confessed; I'm not sure.

11 Q By "they," which members are you speaking of?

12 A Pierson and Olanow, but I don't know anything
13 for a fact, from first-hand information.

14 Q But you claim reports did reflect such informa-
15 tion?

16 A No. They were obtained May, 1964, and related
17 to activities prior thereto.

18 Q What was the information that you obtained in
19 May, 1964?

20 A I can only recall that Mr. Olanow was involved
21 in some unlawful activity. I believe it was smuggling, some-
22 thing into Canada, I don't remember now, and I also spoke to
23 a bank officer with a Canadian bank and he said that he would
24 throw him out of his office if he ever saw him; that he
25 wouldn't have anything to do with him, or words to that effect.

Mr. Brown

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Q What did you do upon acquiring this information?

A I contacted Mr. Olanow and asked to see him privately, at which time I told him I would prefer it if he would make other banking arrangements.

Q How did you contact him?

A By telephone.

Q Did you then visit him?

A I met him at a law office. I don't recall the address, in a room privately and told him we wanted him to make other banking arrangements, to which he agreed readily.

Q Was the office Samuel Stone's office?

A I believe not. Mr. Olanow had left a number at which he could be reached and I think it was another office.

Q Was the office at which you met Mr. Olanow, the same office at which you tendered delivery of the shares of Roosevelt Capital Corporation?

A I believe so, but not sure.

Q Did you discuss with Mr. Olanow the information and the reasons you asked him to remove his accounts?

A As a matter of personal preference, I don't give reasons. It only leads to hard discussions; just to make other arrangements.

Q Having spoken to him on the telephone to arrange

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this meeting, did you have a particular purpose in personally visiting him?

A Yes. I wanted to make sure he got the message.

Q In arranging the meeting, did you speak over the telephone with him?

A I believe so. I'm pretty sure I did.

Q Was your meeting with Mr. Olanow before or after the meeting at which you delivered the shares of Roosevelt Capital Corporation to the officers of that corporation?

A I really don't recall precisely. I tend to think it was the same office I delivered the securities. Whether it was the same day or same time or before or after, I really don't remember right now.

Q Did Mr. Olanow thereupon act upon your request to remove his accounts?

A Yes. He made no objection and agreed to do so.

Q When did he do so?

A Well, I think I was told by Mr. Olanow or by Mr. Pierson, after the message was related to him, that checks were outstanding on some of the accounts and that if I would be patient, they would see to it very shortly my request would be complied with.

Q Your request, of course, had to precede the closing on May 26th of the Roosevelt Capital Corporation?

Mastrorardo

140

1
2 A I thought it was a decent thing to do, to give
3 them an opportunity to find another bank.

4 Q Prior to making that request of him, did you
5 check the ledger of the Roosevelt Capital Corporation account?

6 A No, I did not.

7 Q So that you would not have been aware of the
8 \$227,000 balance in that account?

9 A That is correct. I assumed our operations
10 people performed their job effectively and I had no reason
11 to believe they didn't.

12 Q Did you have occasion, after acquiring the in-
13 formation you did about principals, to call the principals of
14 the selling group to discuss that with them?

15 A Yes. I felt --

16 MR. BERMAN: I was going to interrupt.

17 Off the record.

18 (Discussion off the record)

19 THE WITNESS: Yes, I did. I spoke with
20 one or more. I don't know the individuals of
21 the selling group, in a single conversation.

22 Q Was that a telephone conversation?

23 A Yes. I believe, and again I am not sure, I
24 contacted Mr. Wallace first and ascertained who I should
25 speak to at the old Roosevelt Capital Corporation.

MacDonardo

1/12

1
2 Q Was that a Mr. Shapiro?

3 A I believe so, although again I can't say with
4 certainty. It was either Shapiro or Tolmadge or both.

5 Q What was the substance of your conversation?

6 A Basically, the fact we had received unfavorable
7 information on one of the principals of the buying group,
8 namely, Mr. Olanow and in light of that information, and the
9 fact there was no other identity in the account that I knew
10 of, that I was concerned about the good faith of the buyers,
11 which also, now that I mention this, makes me question my
12 answer I previously gave whether I checked the records or had
13 someone check them.

14 It may be I asked someone to check out to see
15 whether there were any other deposits made to this account.

16 Q What was the reaction of the persons of the
17 selling group to whom you spoke?

18 A I believe it was one of surprise; that this
19 was something new to them.

20 Q Why had you called them?

21 A I felt that they were good customers of our
22 bank and that they may have been misled by the intentions of
23 the buyers, and I thought we owed it to them.

24 Q Did you express the concern that there were no
25 new monies coming into the operation?

1
2 A Yes, I did. I recall being concerned about this
3 so this would lead me to believe, as I have indicated before,
4 we did make some investigation as to whether any additional
5 deposits came in.

6 Q We have not discussed, in the course of this
7 deposition, the various checks issued by, for and to the
8 various accounts which were opened May 14th and thereafter,
9 by or for members of the purchasing group, but can you ex-
10 plain what you mean by, or to what you are referring, expres-
11 sing concern about the absence of new money coming into the
12 situation?

13 A I guess my intuition was, the buyers, at that
14 time, again based on the facts from my investigation, were
15 acquiring this company for personal benefit. This is purely
16 speculation on my part; that if they had checks in my pos-
17 session, I wondered why they were in the account.

18 Q When you expressed a concern there was no new
19 money coming into the account, had you expected that the
20 \$160,000 to be debited against the proceeds of the Treasury
21 bills, would be replaced by the purchasing group?

22 A No. I was more concerned about the general
23 integrity of the buyers, and once having been alerted to the
24 fact that this may have been in question, everything became
25 a matter of suspicion.

Mastronardo

1143

1
2 Q When you refer to "this may have been in ques-
3 tion," do you mean not to replace the \$160,000?

4 A No and I don't know -- That is the key consid-
5 eration.

6 Q Would it have been possible for them, for the
7 members of the purchasing company, to have deposited to the
8 account of Roosevelt Capital Corporation at Hanover Square
9 branch, on May 14th, uncertified checks; that is, their
10 certified checks to back the cashier's checks which issued?

11 A They certainly did not, because there is no
12 evidence. They could have, but they, in fact, did not.

13 Q Mr. Mastronardo, Plaintiffs' Exhibit 12 for
14 Identification, the corporate resolution form (handing) bears
15 the signatures, or appears to bear the signatures of Stuart
16 Wallen, Ray Pierson and Samuel Stone, and is dated May 14,
17 1964.

18 Was Mr. Wallen present during the closing and
19 the meeting at the Hanover Square branch?

20 I would say either he was present at the clos-
21 ing or we obtained his signature subsequently.

22 Q Do you have any recollection?

23 A Not particularly, at this time.

24 Q Mr. Mastronardo, do you know Mr. Joseph Calise?

25 A I believe he was introduced to us by Mr. Pierson

Lester M. Stone

1964

on by Mr. Olanow.

Q On the date of the closing?

A I'm not sure if it was the date of the closing or after, but it was absolutely at that time.

Q Was he a principal of one of the accounts subsequently opened?

A I believe so.

Q Do you recall which one?

A I don't.

Q Would it have been United Film World?

A It may have been.

Q Did he open a personal account?

A Not to my knowledge. He could have done so at any office, without my knowledge.

Q Mr. Mastronardo, on the date of your visit to Mr. Stone's office, May 26, 1964, at which I believe you testified you delivered the balance of the shares of Roosevelt Capital Corporation, were you accompanied by anyone on your trip from the bank to Mr. Stone's office?

A No, I don't think so. It is possible I may have been, but I don't remember being with anyone else.

Q Would Mr. Wallen have accompanied you from the bank?

A No. I don't think any of our bank personnel

Mastronardo

would have accompanied me. I just believe I went by myself.

MR. BRACHTL: Mr. Berman, subject to our adjournment of this deposition, to a date in August, I would propose that we set August 30th as a date for resumption or continuation of this deposition.

Will August 30th meet with your approval?

MR. BERMAN: No. Do you want to talk like this on the record? I'm going to be away from July 24th to three weeks, to August 14th. My fourth week is the week before Labor Day, which is the week we are talking about.

MR. BRACHTL: All right.

MR. BERMAN: Off the record.

(Discussion off the record)

MR. BRACHTL: I would propose the deposition be adjourned to Wednesday, August 16, 1972, which is a date after you return, Mr. Berman, from your vacation, as now scheduled, and which, I believe, is after the date of the return of Mr. Weiss of your office. As I understand, his vacation schedule would appear not to conflict with Mr. Mastronardo's schedule.

MR. BERMAN: That is satisfactory with me,

MR. BRACHTEL: All right.

August 16, 1972, subject to possibility --

MR. BRACHTL: All right.

(Whereupon, at approximately 4:40 o'clock,
p.m., the deposition was adjourned as above stated.)

this _____ day of _____

1972.

<u>Plaintiffs' Exhibits</u>	<u>For Identification</u>	<u>Page</u>
1	Check dated 5-14-64	39
2	Handwritten notes	41
3	2 sheets dated 5-14-64	42
4	Check dated 5-14-64	43
5	Letter " "	45
6	" " "	46
7	" " 5-20-64	58

407a

Mastercard

147

Index

<u>Plaintiffs' Exhibits</u>	<u>For Identification</u>	<u>Page</u>
8	Piece of Paper (receipt)	61
9	" " " dated 5-26-64	72
10	Ledger Sheet - RCG	74
11	1 sheet	90
12	Piece of Paper	122
13	Letter dated 5-14-64	123

C E R T I F I C A T I O N

STATE OF NEW YORK }
COUNTY OF KINGS) SS.:

I, LEO RASHKING, a Shorthand Reporter
for and in the State of New York, do hereby
declare that the deposition of Mr. Patrick
J. Mastronardo was taken before me at the
Eastern District Courthouse, 225 Cadman
Plaza East, Brooklyn, New York, on the 22nd
day of June, 1972.

I am not a party to this action, nor
do I have any association with attorneys on
either side through blood or marriage.

I certify that this deposition of
Mr. Mastronardo was transcribed by me and
reduced to typewriting under my supervision
and that the same is accurate to the best
of my ability.

WHEREFORE, I hereunto set my hand
and seal the 28th day of June, 1972.

Leo Rashking



FRANKLIN NATIONAL BANK

7 531417

MINEOLA, N. Y. May 14, 1964

50-1211
214

PAY TO THE ORDER OF 2 FRANKLIN NATIONAL BANK \$113000 AND 00 CTS

TO THE
ORDER OF

SIDNEY TOL

AGE

MAY 13 1964

ROOSEVELT

OFFICIAL CHECK

[Signature]
AUTHORIZED SIGNATURE

0011800000

00211-12110

409a

(LAR)

Pay to the order of
the Merrill Lynch

[Signature]
J. Edgar Hoover

MAY 19 1964

Resonant Capital

(02-01-033-0)

5/14/64Decontated

Withdrew

Tree Falls	187M
Off Cr (entire)	118M
United Film World	42M
	<u>347M</u>

Off Cr	118M
Off Cr	42M
to United Film (Cr)	<u>60M</u>
	220M

5/15/64

to Transworld 60M

280M

6/22/72
Pl. Ef. 2 for Olen
YPR

227

160

67

United Film World
14-64

02-01-033-8

Reported

Withdrew

Ch from Box Cap 60M

to Pay Person 10 M

Pay Person 42 M

(5/15) Cash \$750

52,750

Universal Theatrical Inc.

02-01-035-3

Reported

Ch of Box Cap 60M

Withdrew

to Letha Pleggen 10 M

Contra Fund 44 M

54

Bel 4000

Contractors Fund

02-01-045-2

Reported

Exp in Universal 44M

1000 CAPITAL

5/14/44

REC'DPAID

TREAS BILLS	187	M
OFF. CK. FNB	118	M
NEW CK. LA. PIERCE	42	M
	<u>\$ 347</u>	M

OFF CK (SIDNEY TOLMAGE)	118	M
OFF CK (SIDNEY TOLMAGE)	42	M
CORP CK (UF)	60	M
	<u>\$ 220</u>	M

5/15/44

Corp ck to Transworld

60

6-22-72
Pl. E/L 3 for Rent
(YAP)

280

67

UNITED Film Works
150 Broadway,
New York, N.Y.C.

(from Locap) 60 m

Pay Person 10 m
Pay Person 42 m
paid 750

TRANSWORLD THEATRICALS, INC

RECD

Coyote House Co 60 m

PAID

Coyote to Ltl Claydon 10 m
" " Contractors Guild 44 m

Contractors Guild

6-22-72
 26. Ex. 4 For
 Ident
 (LPR)

414a



FRANKLIN NATIONAL BANK 7 531418

MINEOLA, N. Y. May 14, 1964

50-1211
 214

PAY TO THE ORDER OF **FRANKLIN NAT'L BANK** **2342000 AND 00 CTS**

TO THE ORDER OF

SIDNEY TOLMAGE

FRANKLIN NATIONAL BANK

OFFICIAL CHECK

50-1211

MAY 20 1964

ROOSEVELT

[Signature]
 AUTHORIZED SIGNATURE

0004200000

00214-1211

Sidney Tolmage

PAY TO THE ORDER OF

IRVING TRUST COMPANY

W. N. NEW YORK 12, N.Y.

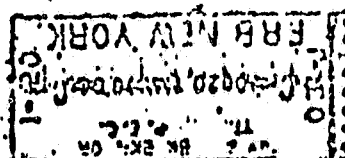
TOLMAGE & HARRIS, SPECIALTY

NEW YORK

1-67

CH 2005 MAY 15 1964 332000

BC 9964 MAY 20 1964 0003



415a

~~FRANKLIN NATIONAL BANK~~
~~INTERNATIONAL BANKING DEPARTMENT~~
~~HANOVER SQUARE, 180 BROAD STREET~~
~~NEW YORK, N. Y. 10015~~

May 14, 1964.

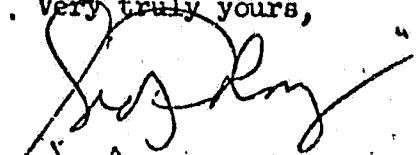
70
✓
Samuel Stone, Esq.
150 Broadway
New York, N. Y.

Re: Sale of Stock of Roosevelt Capital Corporation

Dear Sir:

I am confirming to you that I have today instructed Mr. William Wallace, Jr., Vice President of the Franklin National Bank at Garden City, N. Y. to release to the Roosevelt Capital Corporation \$187,000, the proceeds of Treasury bills which were on deposit with the Garden City Branch of Franklin National Bank to the credit of the Roosevelt Capital Corporation.

Very truly yours,


~~Patrick J. MacFarland~~
~~Assistant Cashier~~

SIDNEY TOLMAGE
TOLMAGE & HARRIS
20 VESEY STREET
NEW YORK 7, N.Y.

6-22-72

P.L. Ex 5 For Ident. FR. 11-2

(LPR)

PL-22-72
 LPR
 For Adm.

SIDNEY TOLMAGE
 20 Vesey Street
 New York 7, N.Y.

May 14, 1954.

Franklin National Bank
 130 Pearl Street
 New York, N. Y. 10015

Gentlemen:

I have received from you today two checks totaling \$160,000 pursuant to an agreement dated April 23, 1954 between S. Louis Olanow and myself. I still owe you 1165.7 shares of stock of Roosevelt Capital Corporation.

I will make every effort to procure these shares. In the event I am not able to deliver these shares properly endorsed to you within thirty days from date hereof, I will deliver to you my check for \$10.00 for each and every share which I do not deliver.

Yours very truly,

Sidney Tolmage

Accepted
 Frank Nat Bank
 May 17 1954
 S. Louis Olanow

Accepted
 May 17 1954
 S. Louis Olanow

417a

LAW OFFICES
TOLMAGE AND HARRIS
20 VESEY STREET
NEW YORK 7, N.Y.

JEANNETTE H. HARRIS
SIDNEY TOLMAGE
ALAN B. WOLPER
IRVING WAXMAN

WORTH 4-1390
AREA CODE 212
CABLE: TOLHARLEK, N.Y.
ISIDORE BERONER
COUNSEL

May 20, 1964

Registered Mail
Return Receipt

Mr. Patrick J. Mastronardo
Assistant Cashier
Franklin National Bank
8 Hanover Square
New York, New York

Re: Roosevelt Capital Corp.

Dear Sir:

Pursuant to my letter to you dated May 14, 1964,
wherein I stated that there was still 1166.7 shares of stock of Roosevelt
Capital Corp. due you, I am herewith enclosing the following:

- 6-22-72
Pl. E47 for
ident.
(200)
1. Certificate #14 for 500 shares of Roosevelt
Capital Corp., endorsed by Ira Katz;
 2. Certificate #17 for 666-7/10 shares of
Roosevelt Capital Corp., endorsed by Ben Okun.

I do not owe you any further stock.

Would you be kind enough to acknowledge receipt of
this letter and the enclosures.

In accord with foregoing.
Received above shares.

Samuel Stone
ST:EK May 26, 1964
Enclosures

Very truly yours,

TOLMAGE AND HARRIS

Sidney Tolmage
Sidney Tolmage

418a

RECEIVED THE FOLLOWING COMMON STOCK CERTIFICATES OF

ROOSEVELT CAML CORPORATION

<u>Number</u>	<u>Amount of Shares</u>	<u>Name of Owner</u>
1	1,000	Jules Backman
2	1,000	Isidore Bergen
3	666 7/10	Paul Black
4	666 6/10	Walter Black Jerry B. Black
5	750	Marcel Descha
6	750	Sidney Descha
7	500	Alexander Elt
8	500	S. Delvalle
9	500	Aaron Gross
10	500	Israel Kalish
11	500	Martin Gains
12	1,000	Martain Kane
13	500	Howard Katz
15	1,000	Samuel J. Le
16	500	William Mode
18	500	Hyman Rubinn
19	1,000	Aaron M. Sch
20	500	Victor M. So
21	1,000	Charles Shap
22	1,000	Sidney Tolma

BEST COPY AVAILABLE

DEBIT

ACCOUNT

Roosevelt Capital Corp 7.02 91.05.0

DATE

5/26/64

DESCRIPTION

AMOUNT

To close 9/10 - off ck chgc # 7531415

118 660 -

7531416

42 600 -

Official
Checks not charged to this a/c 5/15/64
This will adjust

APPROVED BY

TOTAL

160000 -

88/17 MAY 63

DO NOT WRITE IN AREA BELOW

⑈0016000000⑈

419a

6-22-72
Pl. Ex. 9 For ident.
(YAC)

420a
LEDGER

ROOSEVELT CAPITAL CORP.
150 BROADWAY
NEW YORK, N. Y.

02-01-032-0

Roosevelt Capital
410 Avenue of the Americas
150 Broadway
02-01-032-0

DEPOSITS & CHECKS	CHECKS & ANALYSIS	NO. OF CHECKS	DATE	BALANCE
*160,000.00+	16000 2.20		MAY 15 64	* .00 S
* 60,000.00-		1	MAY 15 64	* 160,000.00 P
* 60,000.00-		2	MAY 15 64	* 100,000.00 2/10 cc
*187,000.00+CH		2	MAY 18 64	* 40,000.00 *
* 67,000.00-CC	160,000.00-DH	4	MAY 19 64	* 227,000.00 * 6/10 cc
			MAY 26 64	* .00 5/10 cc
				6
				7
				8
				9
				10
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Unsatisfactory
Requested to
close

6/22/72
Pl. El. 10 for client.
(YPP)

FRANKLIN NATIONAL BANK

CB7014/1 LB

4/10
MCA

ACCOUNT NO.		<input checked="" type="checkbox"/> REGULAR CHECKING <input type="checkbox"/> SPECIAL CHECKING		REQUESTED BY <input checked="" type="checkbox"/> MAVER <input type="checkbox"/> HANER		DO NOT DESTROY CERTIFIED THIS CHECK IS GUARANTEED BY THE FRANKLIN NATIONAL BANK
02 01 032 0				CHECK NO.		
MAVER		PAYABLE TO RODGUSLT CAPITAL CORP.		CHECK NO. 1,176,154		
PAYABLE TO RODGUSLT CAPITAL CORP. FRANKLIN NATIONAL BANK		CHECK NO. 1,176,154		3700000000 FRANKLIN NATIONAL BANK		
 RECEIVED BY		AUTHORIZED SIGNATURE		DATE 5/24/68		

DEBIT

⑈0006700000⑈

6-22-72
 P.L. Everett for Blank.

(SAC)

421a

I, the undersigned, Secretary of

ROOSEVELT CAPITAL CORP

DO HEREBY CERTIFY that at a meeting of the Board of Directors of said corporation, duly held on the 14th day of May, 1964 a quorum being present, the following resolutions were unanimously adopted and recorded in the minute books of said corporation, kept by me, and are in accord with and pursuant to the charter and by-laws of said corporation, and are now in full force and effect, to wit:

1. FRANKLIN NATIONAL BANK, Minnola, N. Y. (hereinafter referred to as Bank) be and hereby is designated as a depository of this corporation, and it is hereby authorized to pay, cash or otherwise honor and charge to this corporation any and all checks, notes, drafts, bills of exchange, acceptances, orders or other instruments for the payment of money or the withdrawal of funds, when signed, made, drawn, accepted or indorsed on behalf or in the name of this corporation by any person then holding any of the following offices or called as follows:

2. Said Bank is further authorized to pay, cash or otherwise honor and charge to this corporation any such instrument without regard to any notation on any part thereof indicating the effect, purpose or condition of its issuance, delivery, receipt or acceptance, and without regard to any alteration, defacement or erasure of such notation, and said Bank is expressly relieved of any duty on its part to pass upon the regularity of such notation, or to make any inquiry in respect thereof or in respect of any alteration, defacement or erasure thereof. Said Bank may conclusively assume that the date of any such instrument, acceptance or indorsement is the true date of the making, drawing, acceptance or indorsement, as the case may be, completed in each instance by delivery on that date.

3. Said Bank is hereby authorized to pay, cash or otherwise honor and charge to this corporation any such instrument and any instrument payable to or held by this corporation when indorsed as aforesaid, and also to receive same for credit to the account of or in payment from the payee, indorsee or any other holder thereof (including any officer, agent or signatory of this corporation), without limitation of amount and without inquiry as to the circumstances of issue, negotiation or indorsement thereof or as to the disposition of the proceeds thereof, even if drawn, indorsed or payable to cash, bearer or to the individual order of any signing officer, agent or signatory, or tendered in payment of his individual obligation.

4. Indorsements on behalf of this corporation upon any and all commercial paper of any kind deposited by or on behalf of this corporation with the said Bank for credit or for collection or otherwise, may be made, affixed or imprinted (manually or by stamp impression) by any one of the foregoing officers or signatories or by any other person authorized or purporting to be authorized so to do, and any case the indorsement may bear the name of this corporation alone without specifying the person who made, affixed or imprinted the same or his authority so to do.

5. Any one of the foregoing officers of this corporation is hereby authorized to borrow money and to obtain credit for this corporation from said Bank on such terms as may seem to him advisable, and to deliver notes, drafts, acceptances, agreements and any other obligations of this corporation therefor in form satisfactory to said Bank, signed as designated in paragraph 1 above, and as security therefor to assign, transfer, hypothecate, mortgage, pledge, trustee, withdraw, exchange and substitute any stocks, bonds, securities, bills and accounts receivable, bills of lading, warehouse receipts or any other property of this corporation, with full authority to indorse or guarantee the same in the name of this corporation, to execute and deliver all instruments of assignment, transfer, hypothecation, mortgage, pledge and trust, and to affix the corporate seal. Any one of the officers or any one of the aforementioned signatories of this corporation acting alone is hereby authorized to discount any bills receivable or paper of any kind (negotiable or otherwise) with full authority to indorse the same in the name of this corporation.

6. All the foregoing authorities shall and continue in full force and effect until revoked or modified by written notice actually received by said Bank setting forth a resolution to that effect stated to have been adopted by the Board of Directors of this corporation, and signed by one purporting to be the secretary or an assistant secretary of this corporation and bearing the purported seal of this corporation; and said Bank is hereby authorized at all times to rely upon the last notice, certificate or communication received by it, when so authenticated, as to resolution of this corporation, or as to the persons who from time to time may be officers or signatories of this corporation, or as to their respective signatures and/or as to any other corporate matters, and Bank shall be harmless in such reliance.

7. That the secretary (or any assistant secretary) of this corporation is hereby authorized to certify and deliver to said Bank copies of these resolutions, and that the signatures of the president (or any vice-president) and the secretary (or any assistant secretary) of this corporation at the foot of the certificate containing these resolutions shall constitute such certificate and resolutions an agreement by this corporation with said Bank with respect to all matters set forth in said certificate and resolutions.

I FURTHER CERTIFY that the persons herein designated as officers of this corporation have been duly elected to and now hold the offices in this corporation set opposite their respective names, and that the following are the authentic, official signatures of the said respective officers and of the named signatories who are not corporate officers, to wit:

Stewart Wallen

Name (Print or Type)

(Signature)

President

Ray Pierson

Name (Print or Type)

(Signature)

Vice-President

Samuel Stone

Name (Print or Type)

(Signature)

Secretary

Name (Print or Type)

(Signature)

Treasurer

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation by order of the Board of Directors this 14th day of May, 1964

AFFIX SEAL BELOW

I, the undersigned, President of the corporation above named, do hereby certify that the foregoing certificate is in all respects true and contains a true copy of the resolutions regularly adopted by the Board of Directors of said corporation in the manner therein stated.

Vice-President

423a

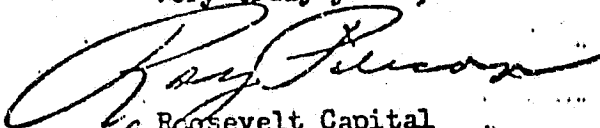
May 14, 1964

Franklin National Bank
130 Pearl Street
New York, New York 10015

Gentlemen:

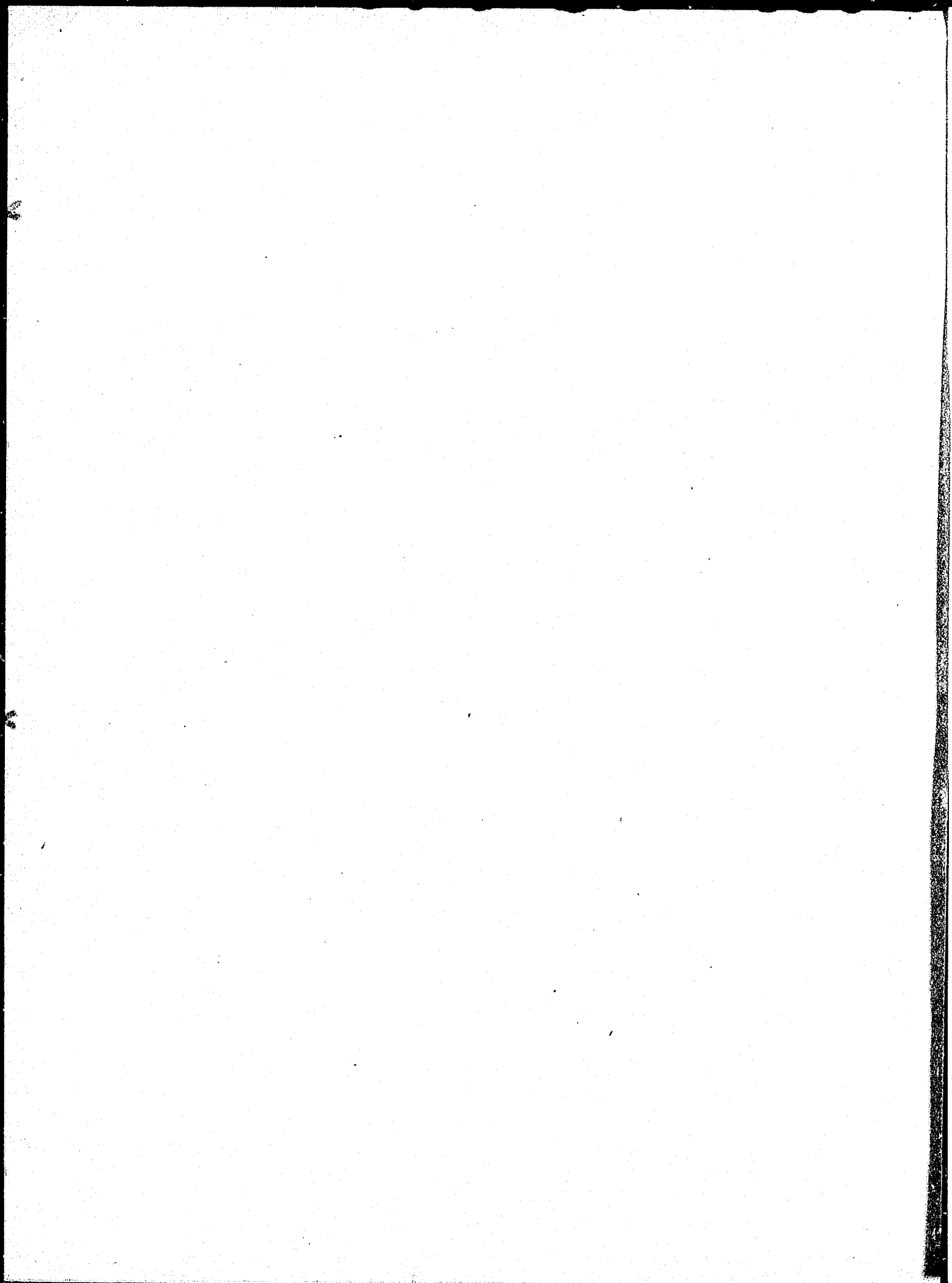
Please issue your official checks to
order of Sidney Tolmage in the amounts of
\$12,000.00 and \$118,000.00 for delivery
to him.

Very truly yours,



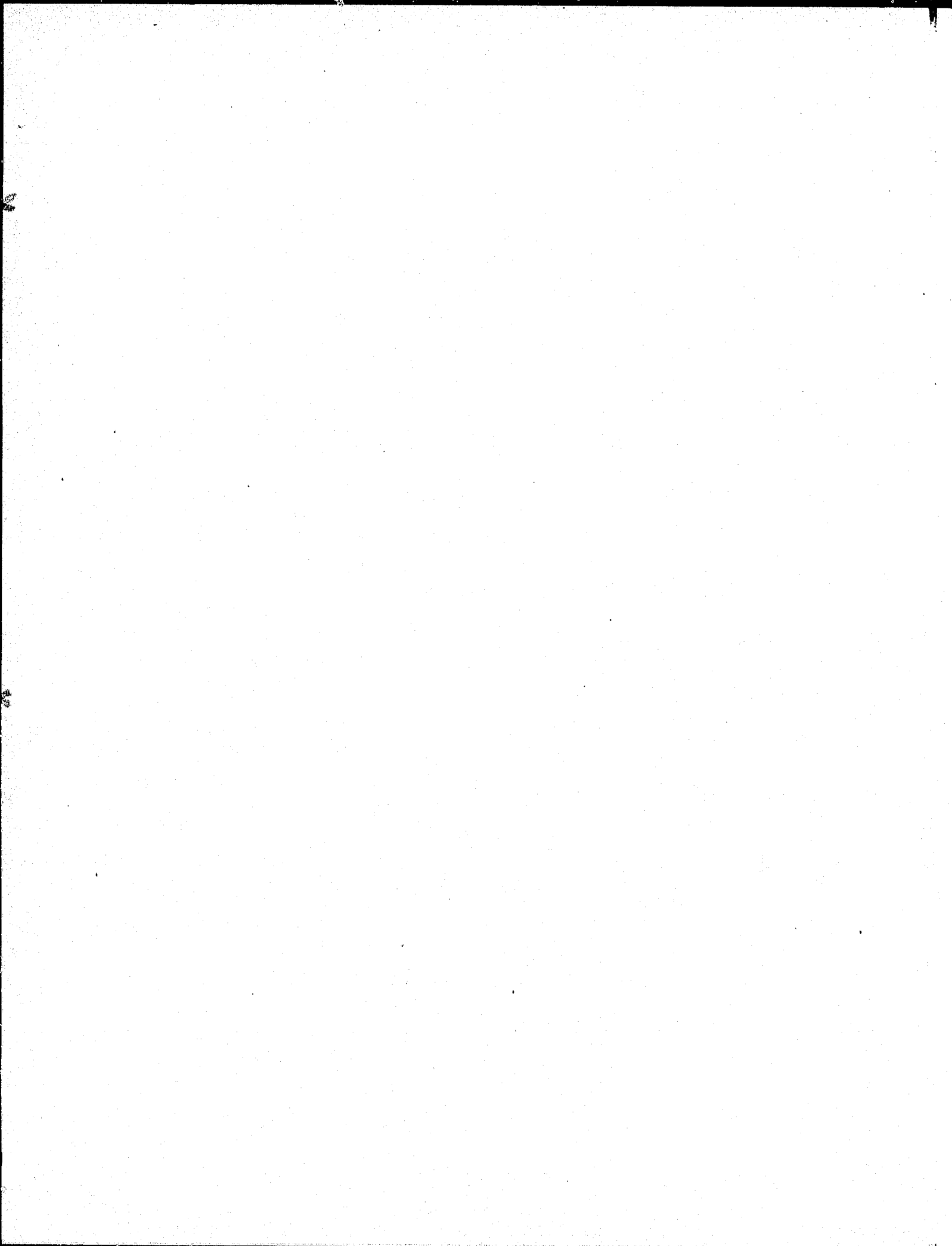
Roosevelt Capital
Corporation

Pl. 6-22-72
Ep. 13 for Mr. Tolmage
LAR



425a

**Transcript of Deposition of Sidney Tolmage, Taken
by Plaintiffs on March 6, 1973 and Exhibits Annexed**



1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

3 -----X

4 UNITED STATES OF AMERICA and
5 MORTIMER TOWEL, as Receiver of
6 the Funds, Assets and Property
of ROOSEVELT CAPITAL CORPORATION,

7 Plaintiffs,

8 -against-

67 C 439

9 FRANKLIN NATIONAL BANK,

10 Defendant.

11 -----X

12 G-80,
13 Eastern District Courthouse,
225 Cadman Plaza, East,
14 Brooklyn, New York.

15 March 6, 1973,
10:30 o'clock, a.m.

16 DEPOSITION of Mr. Sidney Tolmage,
17 taken by the Plaintiffs, pursuant to Notice
18 of Deposition and Order of this Court, at
19 the above place and time, by and before a
20 Notary Public, within and for the State of
21 New York.

22
23
24 LEO RASHKIN

25 ACTING OFFICIAL COURT REPORTER

A P P E A R A N C E S:

2

ROBERT A. MORSE, ESQ.,
UNITED STATES ATTORNEY,
EASTERN DISTRICT OF NEW YORK.

BY: HENRY A. BRACHTL, ESQ.,
ASS'T. U. S. ATTORNEY.

WHITNEY NORTH SEYMOUR, JR., ESQ.,
UNITED STATES ATTORNEY,
SOUTHERN DISTRICT OF NEW YORK.

BY: CHRISTOPHER ROOSEVELT, ESQ.,
ASS'T. U. S. ATTORNEY.

MORTIMER TODEL, ESQ.,
Attorney-at-Law, Pro se.

MESSRS. KAYE, SCHOLER, FIERMAN, HAYS & HANDLER,
ATTORNEYS FOR DEFENDANT.
425 Park Avenue,
New York, New York.

BY: JULIUS BERMAN, ESQ.,
of Counsel.

MESSRS. HART & HUME,
Attorneys for Witness: MR. SIDNEY TOLMAGE.
10 East 40th Street,
New York, New York.

BY: LESTER ESTERMAN, ESQ.,
of Counsel.

U. S. DEPARTMENT OF JUSTICE,

BY: MARK CYMROT, ESQ.

MR. SIDNEY TOLMAGE, WITNESS.

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3 IT IS HEREBY STIPULATED AND AGREED,
4 by and between the attorneys for the respective
5 parties herein, that the sealing, filing and
6 certification of the within deposition be
7 waived and that such deposition may be signed
8 and sworn to before any officer authorized to
9 administer an oath, with the same force and
10 effect as if signed and sworn to before the
11 officer before whom said deposition was taken;
12 and

13 IT IS FURTHER STIPULATED AND AGREED, by
14 and between the attorneys for the respective
15 parties herein, that all objections, except as
16 to form of the question, are reserved to the
17 time of trial; and

18 IT IS FURTHER STIPULATED AND AGREED, by
19 and between the attorneys for the respective
20 parties herein, that a transcript of this
21 deposition will be furnished to the attorneys
22 for the witness.

23 * * *

24
25 MR. BEACHTEL: Gentlemen, we will have

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2 MR. BRACHTL: (Continuing) the usual
3 stipulations.

4 MR. ESTERMAN: Also, please add: It is
5 further stipulated that a transcript of this
6 examination will be furnished to Mr. Tolmage.

7 MR. BRACHTL: I think that is one of
8 the usual stipulations.

9 MR. ESTERMAN: I just want to make sure
10 it is in there.

11 MR. BRACHTL: Right.

12 Off the record.

13 (Discussion off the record)

14 * * *

15 S I D N E Y T O L M A G E, residing at No. 11 Fifth
16 Avenue, City, County and State of New York, called
17 as a witness, first having been duly sworn, was
18 examined and testified, as follows:

19 EXAMINATION BY

20 MR. BRACHTL:

21 Q What is your name, sir?

22 A Sidney Tolmage, --T-O-L-M-A-G-E.

23 Q Where do you presently reside, Mr. Tolmage?

24 A Eleven, Fifth Avenue, New York City 10003.

25 MR. BRACHTL: Off the record.

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Q Mr. Tolmago, have you been a shareholder of Republic Capital Corporation?

A Yes.

Q During what period of time were you a shareholder of that corporation?

A From its incorporation on.

Q On to what date?

A The date that my shares were sold. I think that was May 14, 1964.

Q Did you sell your shares in conjunction with the sale of shares by other shareholders?

A All the other shareholders.

Q So that the same to which you refer, on May 14, 1964, was sale of all shares of Roosevelt Capital Corporation?

A That's right.

Q Did you represent the rest of the shareholders in that sale?

A I did.

MR. BRACHTL: (Handing paper to Witness.)

THE WITNESS: (Taking paper.)

MR. BRACHTL: I hand you a six-page document, which purports to be a conditional sales agreement, dated the 28th day of April,

Tolmage

MR. BRACHTL: (Continuing), 1964,
signed on the last or sixth page by "S. Lonnie
Olanow" and "Sidney Tolmage".

MR. ESTERMAN: (Conferring with Witness.)

MR. BRACHTL: I ask the Reporter to
mark this: "Plaintiffs' Exhibit 1 for
Identification."

(Papers, above described, marked:
"Plaintiffs' Exhibit 1 for Identification,"
as of this date.)

THE WITNESS: (Handing to counsel.)

MR. ESTERMAN: (Examining papers.)

(Handing to Mr. Brachtl.)

Q Mr. Tolmage, I am handing you Plaintiffs' Ex-
hibit 1 for Identification, which purports to be a copy of
an agreement, as described by the Reporter, dated April 28,
1964 and I ask you if that is a correct copy of the agree-
ment of sale, for the sale of Roosevelt Capital shares, to
which you have referred?

A Yes. (Taking and examining.)

Q Was that agreement executed as it is dated,
on April 24, 1964?

MR. ESTERMAN: April 28.

MR. BRACHTL: I'm sorry. April 28th.

1 A I believe so.

2 Q Can you please relate the manner in which you
3 were introduced to, or met, Mr. Olanow?
4

5 A I believe it was as a result of an ad that was placed
6 by me in The New York Times and I further believe that a
7 man by the name of Abrams contacted me,-- although this is
8 vaguely -- a vague recollection.

9 Q Was the advertisement in the Times a sollicita-
10 tion to purchase, or a solicitation to accept the sale of
11 Roosevelt Capital shares?

12 A That is correct.

13 Q Can you state approximately when Mr. Olanow
14 responded to that ad, or in some other way, contacted you
15 in regard to the sale of Roosevelt Capital shares?

16 A I can only say it would be prior to April 28, 1964,
17 maybe a month or thereabout. I can't give you an exact
18 date.

19 Q Did the ad which you placed, or other sollici-
20 tation which you made with regard to the sale of Roosevelt
21 Capital shares, state a price?

22 A No, it did not.

23 Q Did you discuss a price with Mr. Olanow at the
24 outset of your discussions?

25 A Yes. That's to the best of my recollection, we did.

Tolmage

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2 A (Cont'g.) Yes.

3 Q What was the price you were asking for the
4 shares, initially?

5 A We wanted to sell it for what the investors paid for
6 it and by that I mean the stockholders, plus Five Thousand
7 dollars for the work we had put in, in getting the organiza-
8 tion started, incorporated, and in business, and we would
9 turn over to them a corporation which had Three-Hundred-Five
10 Thousand dollars in assets, subject to a loan by the United
11 States Government of One-Hundred Fifty-Thousand dollars.

12 Q Now, you referred to the amount which the
13 shareholders had paid for the shares. Was that amount the
14 original shareholders paid in capital or equity?

15 A Fifty-five -- One-Hundred-Fifty-Five-Thousand dollars.

16 Q So that the asking price was that amount, plus
17 the Five Thousand dollars, to which you referred, or
18 One-Hundred-Sixty-Thousand dollars?

19 A That is correct. That's for the shares.

20 Q Now, did you meet more than once, between
21 the time of your initial meeting with Mr. Olanow and the
22 execution of this agreement?

23 A Yes.

24 Q Can you state with what frequency, or the
25 number of times that you met?

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A Oh, I would say I must have met half a dozen times.
I can't say with frequency.

Q Do you recall where that took place?

A Well, I think some of the meetings must have taken --
I'm only surmising. I can say this: some of the meetings,
at my office and some of the meetings took place at the of-
fice of Olanow's attorney.

Q Do you recall who that was?

A Fisher, Glauberman and Ervine or --

MR. ASTERMAN: That's spelled: E-Z-R-I-N-E;

THE WITNESS: How do you spell that?

MR. ASTERMAN: Ervine, E-Z-R-I-N-E.

THE WITNESS: Yes.

MR. ASTERMAN: Gleiberman. That's spelled

G-L-E-I-B-E-R-M-A-N. I think so. G-L-E-I --.

Q With respect to the meetings which took place
at that law firm's offices, at such meetings, was there a
member of that firm present?

A Oh, yes.

Q Who was that?

A My best recollection is it was Gleiberman.

Q Did a Mr. David Fisher participate in the ne-
gotiation of the agreement?

A I don't recall. He may have.

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Q Can you relate the development of your respective positions, over the course of six negotiating sessions, to arrive at the agreement you agreed on?

A When you say "six," that is an approximate --

MR. BRACHTEL: (Nodding affirmatively.)

A (Cont'g.) -- figure; right? Now the course of development was eventually this agreement was drawn by his law firm and the negotiations were very simple, because that's what we wanted and that's what he gave us, so there was no negotiations as to prior, or anything of that kind.

Q Was there any disagreement or negotiation or agreement as to the manner of payment?

A No. The agreement provided how it should be paid.

Q Was there any negotiation or disagreement, at any point in negotiations, with regard to respective duties of the selling and purchasing shareholders, with regard to meeting requirements, if any, of the Small Business Administration?

A I don't really understand your question: "any negotiation". I mean, I don't understand your question.

MR. BRACHTEL: I'll be happy to restate it.

THE WITNESS: Yes.

Q My question is: the agreement, as executed.

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reflects certain terms requiring the performance of certain duties by the selling shareholders.

A What specific "duties" are you talking about?

Q Well -- You have interrupted my question.

A I'm sorry, sir.

Q My question to you is, and I will state it for a third time: was there disagreement or negotiations with respect to any duties that had been performed as conditions to the agreement, by either the selling shareholders or the purchasing group, with respect to meeting any requirements of the Small Business Administration?

MR. ESTERMAN: (To the witness) Wait a minute.

Before I put my objections on the record, (to Mr. Bracht) he (indicating witness) is being examined here as a witness in your case.

Now, as far as I understood, there is nothing he has to testify to, with regard to the Small Business Administration. That is not the subject-matter of your litigation.

The Witness testified already at an examination before trial, at great depth and I have no objection to your interrogation again, but I don't think you can go into

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2 MR. ROSEN: (Continuing) Small
3 Business Administration duties. That has been
4 covered prior and you have it in detail.

5 I don't think that is an issue in this
6 case and I don't think this witness is required
7 to testify on that subject-matter in this
8 examination.

9 MR. BRACHEL: I think, if we have the
10 question read back, it will relate to, not what
11 the duties are, but the negotiations there were
12 between them, with respect to who had personal
13 knowledge of any duties.

14 MR. LERMAN: (Nodding negatively.)

15 MR. LESTERMAN: Well, I'll let you inquire
16 if you want to, as to what negotiations there
17 were, period.

18 Whatever negotiations there were, the
19 Witness will testify to, but I submit you are
20 putting words in his mouth (indicating).

21 Whatever negotiations he had were re-
22 flected in Plaintiff's Exhibit 1 for Identifi-
23 cation (indicating). The document speaks for
24 itself and reflects the agreement of the
25 parties. I don't think you can go beyond that.

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MR. EMMAN: (Nodding affirmatively.)

Q Mr. Tolmaga, you have indicated you met with Mr. Olanow prior to executing this agreement, on about six occasions.

Can you describe what was discussed between you and Mr. Olanow on this --

A Did I say prior, or did I say six, altogether, approximately, because I don't think we had that many. There was really no problem.

MR. BRACHTEL: You have not yet answered my question.

Q What was discussed at any meetings which were held, prior to the execution of this agreement (indicating)?

A Then -- prior. How it was going to be paid. What they were going to get for it. The matters that were finally set forth in this agreement (indicating). That is all the matters that were discussed.

Q At the outset, was there disagreement as to price?

A No.

Q Was there any disagreement as to the manner in which payment was to be made?

A I think we discussed it and I think it was their suggestion that a letter of credit be set up and it didn't

Tolmage

make any difference to me, because a letter of credit is good cash, subject to giving whatever documents and stock I had to give, I'd get the cash, so those were just ordinary negotiations. There were no problems involved.

Q Now, on Plaintiffs' Exhibit 1 for Identification, in addition to the typed markings, which appear, there are also certain changes which are manuscript changes, which have been initialled: (indicating) matters have been interlineated, crossed-out in some instances (indicating).

Can you tell me when those changes were made?

A (Examining Exhibit 1.) I would assume and I don't know. I haven't a recollection of it at the time, and I would assume they were done at the same time they were signed.

Q But you have no present recollection?

A No.

MR. BRACHTEL: Will the Reporter please mark, "Plaintiffs' Exhibit 2 for Identification," what purports to be a Xerox copy of a letter dated May 4, 1964, addressed to Mr. S. Lonnie Olanow from Mr. Sidney Tolmage.

(Paper, above described, marked: "Plaintiffs' Exhibit 2 for Identification," as of this date.)

MR. BRACHTEL: (Handing to Witness.)

Tolmage

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1 THE WITNESS: (Handing to counsel.)

2 MR. ESTERMAN: (Reading and handing.)

3 MR. BERMAN: (Reading and handing to
4 Mr. Todel, Mr. Roosevelt and Mr. Cymrot.)

5 MR. CYMROT: (Handing to Mr. Brachtel.)

6 MR. BRACHTEL: (Handing to Witness.)

7 Q Mr. Tolmage, I have handed you Plaintiffs'
8 Exhibit 2 for Identification, which purports to be a copy
9 of a letter by you to Mr. Olanow, dated May 4, 1964⁵ and I
10 ask you if you can identify that as a correct copy of a
11 letter which you sent --

12 A It is.

13 Q (Continuing) -- and the function of that
14 letter was to correct a misstatement in the agreement, with
15 respect to the number of shares?

16 MR. BERMAN: Objection.

17 A A typographical error.

18 Q So that the agreement which refers to Fifteen
19 Hundred shares of the capital stock of Roosevelt Capital
20 Corporation should, in fact, refer to Fifteen-Thousand-Five-
21 Hundred shares?

22 MR. BERMAN: Objection.

23 A That's correct.

24 Q Mr. Tolmage, paragraph two of the agreement
25

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2 dated April 28, 1964 provides, and I quote: "On or before
3 May 1, 1964, Olanow shall cause to be executed by the Bank-
4 ers Trust Company of New York, New York an irrevocable
5 Thirty-day Letter of Credit, in the sum of ONE-HUNDRED-SIXTY-
6 THOUSAND (\$160,000) DOLLARS, which shall provide for pay-
7 ment of said sum against delivery of FIFTEEN-HUNDRED-FIFTY
8 (1,550) Shares of the Capital Stock of Roosevelt, which
9 number of shares the stockholders warrant and represent to
10 be the entire issued and outstanding shares of said corpora-
11 tion, said stock to be delivered free and clear in all re-
12 spect, duly endorsed for transfer to Olanow or his nominees
13 and with all taxes, transfer stamps thereon duly executed.
14 (Elipsis.)"

15 Q (Cont'g.) Now, does this paragraph contemplate,
16 to your knowledge and recollection, that the shares of stock
17 which you were delivered, would be pledged to secure the
18 letter of credit before payment was to be made?

19 MR. BERMAN: Objection.

20 MR. ESTERMAN: I will object to that
21 question. There is no reference to that in
22 anything which you have read.

23 MR. BRACHTL: I have asked what were
24 his contemplations.

25 MR. ESTERMAN: Whatever it contemplates,

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2 is written in this agreement (indicating Plain-
3 tiffs' Exhibit 1) and I will not let you ask what
4 is in --

5 MR. BRACHTEL: I am not asking what is in
6 the minds of the parties.

7 MR. ESTERMAN: There is nothing in this
8 agreement (indicating), which says there is to
9 be any pledge to anything, and what is in the
10 minds, since the document was signed by both
11 parties.

12 MR. BRACHTEL: Since it does not appear
13 in the text, I am asking the witness --

14 MR. ESTERMAN: There has been no evidence
15 of anything of this kind.

16 MR. BRACHTEL: (Continuing) -- what is
17 the background.

18 Isr!y the purpose of this to adduce
19 evidence?

20 MR. ESTERMAN: Yes, concerning or
21 dealing with the facts.

22 MR. BRACHTEL: I beg your pardon.
23 Off the record.

24 (Discussion off the record)

25 I will restate the question.

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EXAMINATION BY

MR. BRACHTEL: (Continuing)

Q To your knowledge, was it the intention of the purchase group to use the shares of Roosevelt Capital Corporation to secure or to pledge as collateral, for the letter of credit to which reference is made in paragraph two of the agreement, Plaintiffs' Exhibit 1 for Identification?

MR. BERMAN: Objection.

MR. ESTERMAN: That is, Mr. Tolmago, to your knowledge?

A I have no knowledge as to what they intended.

Q Did you discuss with Mr. Olanow, or any other members or representatives of the purchasing group, the use of the shares which you were selling to them, as collateral for their purchase rights?

A Yes. Well, are you talking about the, for the letter of credit mentioned in here (indicating)?

Q The letter of credit, or any other --

MR. ESTERMAN: Off the record.

(Discussion off the record)

THE WITNESS: Wait. On the record?

MR. ESTERMAN: Would the Reporter please read back the question.

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A Never discussed anything with them, in that regard.

Q When did the closing, pursuant to this agreement (indicating), take place, Mr. Tolmaga?

A I believe it was May 14, 1964.

Q At the closing was payment, or at any time prior to the closing, was payment for the shares made to you, in the manner described and contemplated by paragraph two (indicating)?

A If you mean by a letter of credit, the answer is no.

Q How was payment made?

A Cashier's check.

Q Had you been advised prior to the closing, how payment would be made?

A It would not be made by letter of credit. I was advised.

Q When?

A Two, three or four days before the closing.

Q By whom?

A Olanow.

Q Do you recall where that discussion took place?

A No. I -- I. It was over the telephone, or at my office. It was not at his office -- his attorney's office.

Q Did you visit the El Morocco Restaurant with Mr. Olanow?

Exhibit

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2 A I certainly did.

3 Q Do you recall when that took place?

4 A That was before the closing. Oh, I can't give you the
5 date on this. If I had to, I might be able to. I'm not
6 sure.

7 MR. BERMAN: (To Mr. Brachtel)

8 Couldn't you give him the date on that?

9 MR. BRACHTEL: I really couldn't.

10 THE WITNESS: You don't have it?

11 MR. BRACHTEL: I don't have the date.

12 MR. BERMAN: I am disappointed.

13 MR. BRACHTEL: Off the record.

14 (Discussion off the record)

15 Q When Mr. Olancw advised you that payment would
16 be made in cash and not by letter of credit, did he tell you
17 the reason?

18 A He suggested to me there is no reason why he should
19 go to the expense of opening a letter of credit when he was
20 going to give us cash, and I couldn't find that difficult.

21 Q Had you previously inquired as to whether
22 a letter of credit had been issued?

23 A Many times.

24 Q Do you recall his responses?

25 A Always gave me some excuse: the officer wasn't

Tolmage

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there, that was handling the matter and someone was out of town. Half a dozen excuses.

Q Do you know an attorney named Sacciel Stone?

A I do.

Q How long have you known Mr. Stone?

A Let me see. He was in the Criminal Investigation Division, one of the associations to which I belonged -- The C.I.D.

Q The initials?

A Criminal Investigation Division.

Q What is the nature of that organization?

A It's a Veterans organization of C.I.D. agents of the Air Force of the United States Armed Forces.

Q Had you served with Mr. Stone in the Armed Forces?

A Yes. I -- I hope you don't mean in the same unit with him. We were in the War together and he was in the same, -- in the same -- in the Criminal Investigation Department. Let's put it that way.

Q Had you made Mr. Stone's acquaintance during the War, or only in connection with the Veterans' organization?

A Only in connection with the Veterans' organization.

Q And did your acquaintance commence long after

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the War was over?

A I can't place that, but I know it was, - I think it was -- I won't give you the exact date. I don't know the exact date.

Q Prior to May 14, 1964, had you seen, spoken to Mr. Stone on occasions at Criminal Investigation Division functions?

A I believe that I have.

Q Do you know Mr. Charles Shapiro?

A Yes.

Q Who is Mr. Charles Shapiro?

A He is the President of the Roosevelt Capital Corporation.

Q And was Mr. Shapiro also a member of the Criminal Investigation Division?

A Yes, he was.

Q Does Mr. Shapiro know Mr. Stone; to your knowledge?

A Yes. I would think so.

Q Had he known him, at or prior to May of 1964?

A I would believe so.

Q Do you know Patrick J. Mastronardo?

A I know who you are talking about. I met him May 14, 1964, for the first time.

Q In 1964, had you maintained an account at the Irving Trust Company?

A Who is "you"? Me, personally?

Q Yes.

A That's right.

Q For how long a period of time had you maintained it?

A Just a minute. The answer is yes and how long had I maintained it?

Q Prior to May of 1964?

A (Pause) This is January. This is 1974. This is 1973 -- 63. Oh, possibly, eight or ten years before that. I'm not sure.

Q Did Patrick J. Mastronardo ever have occasion to perform banking services for you as an officer of the Irving Trust Company?

A Never.

Q Did you know Mr. Mastronardo while he was an officer at Irving Trust Company?

A I have been told --

MR. BERMAN: Objection. The question has been answered.

A (Continuing) -- told you I met him for the first time May 14, 1964.

Q Did you have occasion to visit the Franklin

1
2 National Bank on Pearl Street in Manhattan, prior to May 14,
3 1964?

4 A No.

5 Q Did you have occasion to speak, by telephone
6 or otherwise, with Patrick J. Mastronardo of the Franklin
7 National Bank, on May 13th, with regard to details of the
8 closing?

9 A No?

10 Q Yes.

11 A The answer is no.

12 Q Now, the closing on the sale of shares, pur-
13 suant to paragraph one (indicating), took place May 14,
14 1964.

15 A I believe so.

16 Q Can you state where that closing took place?

17 A At the Franklin National Bank, in lower Manhattan
18 branch. I don't know the exact address.

19 Q Do you recall the time at which that closing
20 took place, commenced or covered?

21 A I would say around noon would be correct.

22 Q Do you recall if you conducted other business
23 in your office, before going to the closing?

24 A No.

25 Q Where, in the Franklin National Bank, did the

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2 closing take place?

3 A There seemed to be a conference room there. I can't
4 tell you, more specifically, what that room was.

5 Q Was it on the first floor?

6 A No. No. I can't tell you that.

7 Q Do you have any recollection whether it was
8 on an upper floor?

9 A (Nodding negatively.) I don't know. It wasn't fifty
10 floors up, or anything of that kind. It was in the lower
11 part of the building.

12 Q Did the conference room have windows?

13 A No. I can't answer that.

14 Q You don't recall if it had windows?

15 A That's right.

16 Q Do you recall the approximate size of the
17 conference room?

18 A I would say it was almost as long as this room(indi-
19 cating) and I would say it was about three-quarters of that
20 width.

21 MR. BRACHTL: Off the record.

22 (Discussion off the record)

23 Q Would you --

24 A About twenty, twenty feet long, fifteen to eighteen
25 feet wide and that's approximation.

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Q Was the conference room furnished with a large table?

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A Well, there was a table there. I don't know how large it was.

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Q Was the table located in the center of the room?

8

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A I can't answer that, either. I don't know.

10

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Q Do you recall where in the room you sat, if you sat?

12

13

A When I first came in, or later?

14

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Q When you first came in.

16

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A I moved around. It took about an hour, an hour and a half, the closing, and I must have moved from one place to another. I can't really tell you that.

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Q Can you identify those persons present at the closing?

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A To the best of my recollection, I was there, of course. Mastronardo was and Stone was there. A man by the name of Pierson was there. Olanow was there and there was one other person, whose name I do not know.

Q Could that person have been William Fio Rito?

A I don't know.

Q Do you know a William Fio Rito?

A I have heard the name, but I don't know him and

Tolmago

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wouldn't know what he looks like.

Q Was the unidentified person present at the closing in the conference room?

A At one time, he was. I don't know if he stayed there throughout the entire period.

Q Could that person have been a man named Oscar Nichols?

A I can't answer that, either.

Q Have you ever met Oscar Nichols?

A I don't believe I have heard that name.

Q Did you have occasion to return to Franklin National Bank, May 15th, the following day?

A No.

Q When you arrived for the closing, Mr. Tolmago, was anyone else present in the closing room?

A You mean when I arrived?

Q Yes.

A I think I was the first one to arrive.

Q Did you meet Mr. Mastronardo, at that time?

A I met -- When -- If he, you mean, he is the first person?

Q Yes.

A I don't think so.

MR. BRACHTL: Off the record.

(Discussion off the record)

(RECESS: 11:05 a.m.)

* * *

(EXAMINATION RESUMES: 11:20 a.m.)

* * *

MR. BRACHTL: Shall we resume?

MR. ESTERMAN: Yes.

Mr. Bracht1, proposed "Plaintiffs' Exhibit 3-A for Identification" was the letter of May 14, 1964?

MR. BRACHTL: That is correct.

What I am going to do is to ask the Reporter to read each one, of a series of documents, into the record.

MR. ESTERMAN: All right.

MR. BRACHTL: Mr. Tolmage, I am handing you a Xerox copy of a letter, dated May 14, 1964, on what purports to be crossed-out letterhead of the Franklin National Bank, addressed to Samuel Stone by you, with pencil notations crossed out, which I will ask the Reporter to mark: "Plaintiffs' Exhibit 3-A for Identification," as of this date.

THE WITNESS: (Taking) It's a pleasure

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2 THE WITNESS: (Continuing) to be repre-
3 sented by counsel. (Handing to Mr. Esterman.)

4 THE REPORTER: Paper, above described,
5 marked: "Plaintiffs' Exhibit 3-A for Identi-
6 fication," as of this date.)

7 MR. ESTERMAN: Off the record.

8 (Discussion off the record)

9 EXAMINATION BY

10 MR. BRACHTL: (Continuing)

11 Q Mr. Tolmage, is Plaintiffs' Exhibit 3-A for
12 Identification, as described by the Reporter, a correct copy
13 of a letter signed by you?

14 A (Reading) That is correct (indicating), with the ex-
15 ception of the words: "to," over here (indicating to couns-
16 el) to my request; that is, above "Samuel Stone" (indicating)
17 and the printed part of my name underneath my signature
18 (indicating). That is my recollection.

19 Q In other words, at the time you signed the
20 original of this document, the word "to" and the arrow
21 pointing to the addressee were not there (indicating)?

22 A I don't believe so.

23 Q And, similarly, the writing underneath your
24 name, indicating your firm name, and so on, was not there
25 (indicating)?

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A I don't believe so.

Q And, similarly, the writing underneath your name, indicating your firm name and so on, was not there (indicating)?

A I believe so.

Q Was the original of that letter otherwise in the form as it is shown in this copy?

A I believe so.

Q Had you scratched out the letterhead portion of the letter?

A No, not to my recollection.

Q (Continuing) And had you scratched out the name of "Patrick J. Mastronardo," Assistant Cashier, underneath the space (indicating)?

A I may have done that.

Q Was this letter signed by you on the date that is indicated on the letter?

A That is correct.

Q That is, May 14, 1964, and did you deliver, or mail this letter to Mr. Stone?

A No.

Q Can you tell me where this --

A Wait a second.

That's a double question. I didn't mail it to Mr.

1
2 Stone. I delivered it with the balance of the papers when
3 I received payment (indicating) of the moneys for the stock.

4 Q This was to be at the closing at Franklin
5 National Bank?

6 A That's correct.

7 Q On May 14th?

8 A Yes.

9 Q Did anyone request that you prepare this
10 letter?

11 A I didn't prepare it.

12 Q Did anyone request you sign this letter?

13 A Yes.

14 Q Who?

15 A I think it was Mr. Mastronardo.

16 Q Did Mr. Mastronardo indicate to you why he
17 requested that you execute this letter?

18 A No.

19 Q Did any other participant, or person, present
20 at the closing, indicate to you the purpose for this letter?

21 A Not that I recall.

22 Q Do you recall why you signed this letter?

23 A I thought -- I thought it was a perfectly proper
24 letter, because we were selling assets at Three-Hundred-Five
25 Dollars and, together with the check I re-endorsed back to

the corporation; that is, Roosevelt Capital Corporation, together with this One-Hundred-Eighty-Seven-Thousand Dollars in Treasury Bills, that indicated there was Three-Hundred-Five-Thousand Dollars of assets.

Q Now, who prepared this letter?

A I have no idea.

Q Was it prepared at all during the closing?

A It was presented to me, during the closing. When it was prepared, I have no idea.

Q When, during the closing, was it presented to you?

A Well, that was about -- All the documents were put on the table (indicating) and -- including the checks and this letter (indicating). I think there was another letter.

Q By whom were they put on the table?

A I don't remember.

MR. BRACHTEL: Now, the letter states, and I am quoting from Plaintiffs' Exhibit 3-A for Identification: "I am confirming to you that I have today instructed Mr. William Wallace Junior, Vice President of the Franklin National Bank, at Garden City, New York, to release to the Roosevelt Capital Corporation One-Hundred-Eighty-Seven-Thousand Dollars, the proceeds of"

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MR. BRACHTEL: (Continuing reading)

"Treasury Bills which were on deposit with the Garden City Branch of Franklin National Bank to the credit of the Roosevelt Capital Corporation."

Q Is that letter a correct statement, in stating that you had that day made such instruction to Mr. William Wallace?

A If I wrote it, I must have done so.

Q Do you recall doing so, and in what manner you did so?

A It would not be in person and it would not be by letter, so it could only have been by telephone.

Q Now the letter recites that the Treasury Bills were on deposit to the credit of the Roosevelt Capital Corporation, but the letter also states that you had instructed Mr. William Wallace Junior to release these proceeds to the Roosevelt Capital Corporation?

A (Taking)

MR. ESTERMAN: (Reading.)

MR. BRACHTEL: Can you explain?

THE WITNESS: I don't think there is anything to explain. These bills were on deposit to the credit of Roosevelt Capital

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THE WITNESS: (Continuing) Corporation.

I believe, though I am not sure, that they were due on that date. That means there were funds available, so the purpose was to have it deposited in a Roosevelt Capital Corporation account. That's all there was. It was Roosevelt bills. It was Roosevelt money and it was to be -- and it was an indication there was One-Hundred-Eighty-Seven-Thousand Dollars. That's all.

Q Were those Treasury Bills being held by Franklin National Bank, to secure an indebtedness by Roosevelt Capital Corporation?

A No.

Q Were they being held for any purpose other than simply deposit.

A Just investment.

Q And were they held, as the letter says, to the credit of Roosevelt Capital Corporation?

A They were deposited -- The purchase of the bills was made with Roosevelt Capital Corporation funds.

Q Then, what necessity would there be to: (reading) "...release the proceeds to the Roosevelt Capital Corporation," if the Roosevelt Capital Corporation owned

1
2 them?

3 A I could very easily see the necessity, because they
4 were told they would get a corporation with Three-Hundred-
5 Five Thousand Dollars in assets.

6 Q When you say "they," you are speaking of?

7 A The purchaser. The purchaser and there was a check
8 for One-Hundred-Eighteen-Thousand Dollars endorsed back to
9 Roosevelt Capital Corporation. That's one of the cashier's
10 checks issued by the Franklin National Bank (indicating),
11 and they wanted to know that there was One-Hundred-Eighty-
12 Seven-Thousand Dollars more and this is just an indication
13 of it (indicating).

14 Q Now, if the purpose of this was to indicate
15 that there were One-Hundred-Eighty-Seven-Thousand Dollars
16 in assets, in this form, and you had represented to the
17 purchasers that the corporation had a total of Three-Hundred-
18 Five-Thousand Dollars, how did you confirm to them that the
19 balance of assets, which you represented the corporation had,
20 existed?

21 A I imagine they must have made a call themselves to
22 see whether that money was there. I wouldn't know.

23 Q Can you describe the other assets, or the
24 balance of the assets of Roosevelt Capital Corporation,
25 prior to the sale?

Tolmaga

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2 A I think there was an investment portfolio. In what
3 what you are talking about?

4 Q Yes, it is.

5 A (Cont'g.) An investment portfolio, of three separate
6 items and that was the other,-- those were the other assets
7 of the Roosevelt Capital Corporation.

8 MR. BRACHTEL: Mr. Tolmaga, I am handing
9 to you a Xerox copy of what purports to be the
10 front and back of a check, dated May 14, 1964,
11 of the Franklin National Bank, in the amount
12 of Forty-Two-Thousand Dollars, which I will
13 ask the Reporter to describe and mark:
14 "Plaintiffs' Exhibit 3-B for Identification,"
15 as of this date.

16 (Paper, Above described, marked:
17 "Plaintiffs' Exhibit 3-B for Identification,"
18 as of this date.)

19 THE WITNESS: (Reading and handing
20 to Mr. Esterman.)

21 MR. ESTERMAN: (Reading.)

22 MR. BRACHTEL: Mr. Tolmaga, I am handing
23 to you a Xerox copy of what purports to be the
24 front and back of a check, dated May 14, 1964,
25 of the Franklin National Bank, in the amount of

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2 MR. TOLMAGE: (Continuing) One-Hundred-
3 Eighteen-Thousand Dollars, which I will ask
4 the Reporter to describe and mark: "Plaintiffs'
5 Exhibit 3-C for Identification," as of this date.

6 (Paper, above described, marked:
7 "Plaintiffs' Exhibit 3-C for Identification,"
8 as of this date.)

9 THE WITNESS: (Reading and handing
10 to Mr. Esterman.)

11 MR. ESTERMAN: (Reading.)

12 Q Now, Mr. Tolmage, is Plaintiffs' Exhibit 3-C
13 for Identification (handing to Witness) an accurate copy of
14 the front and back of the One-Hundred-Eighteen-Thousand
15 Dollar check, to which you earlier referred?

16 A I believe so.

17 Q And that check was received by you in consid-
18 eration of the transfer of the shares --

19 A Partial consideration.

20 Q (Continuing) -- of the Roosevelt Capital Cor-
21 poration.

22 Was the balance of the consideration, represented by
23 the check for Forty-Two-Thousand Dollars, of which Plain-
24 tiffs' Exhibit 3-B for Identification (indicating), purports
25 to be a true copy? (Handing to Witness.)

Tolmage

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2 A Yes.

3 Q These two checks were received by you at the
4 closing, as the consideration for the sale of all shares of
5 Roosevelt Capital Corporation; is that correct?

6 A Correct.

7 MR. BRACHTL: Mr. Tolmage, I am handing
8 to you a Xerox copy of what purports to be the
9 Assignment of Certain Debts and Chattels, dated
10 May 14, 1964, from the Roosevelt Capital Cor-
11 poration to the Roosevelt Capital Company,
12 which I will ask the Reporter to describe and
13 mark: "Plaintiffs' Exhibit 3-E for Identifica-
14 tion," as of this date.

15 (Paper, above described, marked:
16 "Plaintiffs' Exhibit 3-C for Identification,"
17 as of this date.)

18 THE WITNESS: (Reading and handing
19 to Mr. Esterman.)

20 MR. ESTERMAN: (Reading and handing
21 to Mr. Brachtl.)

22 MR. BRACHTL: (Handing to Mr. Roosevelt.)

23 MR. ROOSEVELT: (Handing to Mr. Cymrot.)

24 Q Mr. Tolmage, (handing) Plaintiffs' Exhibit 3-E
25 purports to be a copy of an assignment of certain debts and

capital stock from Roosevelt Capital Corporation to one, Roosevelt Capital Company.

Q (Cont'g.) Do you recognize that as a correct copy of an assignment which was presented by you on the day of the closing?

A It was not "presented by (me) on the date of the closing."

Q I see. Can you tell me when it was presented, if at all?

A It was never "presented". Let me understand that, "Presented" to whom, sir?

Q To the purchaser of Roosevelt Capital Corporation.

A It was never "presented" to them.

Q Did you prepare this assignment (indicating)?

A I would think so.

Q Do you know if it was signed by Charles Shapiro?

A It was.

Q And what was the function, or the purpose, of the assignment?

A It goes back to the original deal, because the people who were buying the stock of the corporation, expected to get a corporation that was completely liquid -- cash,

1
2 A (Continuing) Three-Hundred-Five-Thousand Dollars.

3 They were not taking any of the portfolio of the
4 corporation. This assignment (indicating) is of the port-
5 folio of the corporation. That was the function of the
6 assignment and that is for the reason that they turned back
7 to the corporation One-Hundred-Eighteen-Thousand Dollars by
8 this (indicating),- by endorsement of this check for
9 One-Hundred-Eighteen-Thousand Dollars (indicating), Plain-
10 tiffs' Exhibit 3-C for Identification.

11 Q Now, you referred earlier in describing the
12 assets that constituted the balance of the assets of the
13 Roosevelt Capital Corporation, in addition to the One-Hund-
14 red-Eighty-Seven-Thousand Dollars, they consisted of three
15 items. Are the three items, those described in that
16 assignment?

17 A That is correct.

18 MR. BRACHTL: Mr. Tolmage, I am handing
19 to you a Xerox copy of what purports to be a
20 Xerox copy of a letter of Sidney Tolmage to
21 Franklin National Bank, dated May 14, 1964,
22 which I have asked the Reporter to describe
23 and mark: "Plaintiffs' Exhibit 3-D for
24 Identification," as of this date.

25 (Paper, above described, marked:

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"Plaintiffs' Exhibit 3-D for Identification,"
as of this date.)

THE WITNESS: (Taking and reading and
handing to Mr. Esterman.)

MR. ESTERMAN: (Handing to Mr. Brachtl.)

MR. BRACHTL: (Handing to Mr. Berman.)

MR. BERMAN: (Handing to Mr. Todel.)

MR. TODEL: (Handing to Mr. Roosevelt.)

MR. ROOSEVELT: (Handing to Mr. Cymrot.)

MR. CYMROT: (Handing to Mr. Brachtl.)

Q Mr. Todel, you have heard the Reporter describe Plaintiffs' Exhibit 3-D for Identification, which purports to be a copy of a letter which has a space for your signature (indicating).

Is this a copy of a letter which you executed May 14, 1964?

A Correct.

Q Was this letter executed at the closing?

A That's right.

Q To whom was it delivered?

A Mastronardo.

Q Do you know who prepared this letter?

A Who dictated it? No. I can't tell it to you. It may be me, but I'm not sure. (Indicating).

Tolmage

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Q Do you know who typed the letter?

A Someone at the Franklin National Bank.

MR. BRACHTEL: Mr. Tolmage, I am handing to you what purports to be a Xerox copy of a letter dated May 14, 1964, signed by Ray Pierson, in behalf of Roosevelt Capital Corporation, which I have asked the Reporter to describe and mark: "Plaintiffs' Exhibit 3-G for Identification," as of this date.

(Paper, above described, marked: "Plaintiffs' Exhibit 3-G for Identification," as of this date.)

THE WITNESS: (Taking, reading and handing to Mr. Esterman.)

MR. ESTERMAN: (Handing to Mr. Berman.)

MR. BERMAN: (Reading and handing to Mr. Todel.)

MR. TODEL: (Reading and handing to Mr. Roosevelt.)

MR. ROOSEVELT: (Reading and handing to Mr. Cymrot.)

MR. CYMROT: (Reading and handing to Mr. Brachtel.)

Q Mr. Tolmage, with respect to Plaintiffs'

Exhibit 3-G for Identification (handing to Witness), I ask you if you have ever seen the original of the letter, that purports to be a copy?

A Not to my knowledge.

Q Do you know if a letter of that content or purport was prepared or executed at the closing?

A I wouldn't have the slightest idea.

Q Did you request a letter?

A I did not.

Q Were you informed afterward, it was executed?

A I am aware of it now. (Indicating). I think at a previous examination, I was aware of it, but I certainly did not know of any such letter.

MR. DRACHTL: Mr. Tolmage, I am handing to you what purports to be a Xerox copy of corporate resolutions, on the Franklin National Bank stationery, dated May 14, 1964, which I have asked the Reporter to describe and mark: "Plaintiffs' Exhibit 3-F for Identification," as of this date.

(Paper, above described, marked: "Plaintiffs' Exhibit 3-F for Identification," as of this date.)

THE WITNESS: (Reading).

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Q Mr. Tolmage, I am handing you Plaintiffs' Exhibit 3-F for Identification, which purports to be a certificate of corporate resolutions of Roosevelt Capital Corporation, dated May 14, 1964, and I ask you if you have ever seen the original, or a copy of that corporate resolution?

A The answer --

MR. ESTERMAN: (To the Witness.)

Please. Can I have that read back.

MR. BRACHTL: Yes.

(Reporter reads back previous question.)

THE WITNESS: The answer is no, not the way it is here (indicating).

Q Can you describe any copy or the original of that resolution, which you have seen?

A Yes. Without the signatures of Wallen, Pierson or Samuel Stone, on the lines above (indicating).

Q And where, or how did you obtain such a copy?

A It was put on the table.

Q At the closing?

A At the closing.

Q Now, Mr. Tolmage, referring, if you care to, to these documents (indicating), could you please describe what transpired first, in the business of the closing, once

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it commenced?

A Well, I brought the certificates of stock in. They were duly endorsed, all the stock, with the exception of approximately eleven hundred shares.

MR. BRACHTEL: May I interrupt for a moment?

Q In what manner were they endorsed; and to whom?

A In blank. They were endorsed in blank and I put them on the table (indicating). Then, I put the resignations of the directors and officers on the table (indicating).

Q May I ask who those directors and officers were?

A They were Charles Shapiro, Al Eltman (phon.) and a man by the name of Arthur V. E-R-I-S-K-I-N, Briskin.

MR. BERMAN: Briskin.

MR. TOLMAGE: Briskin.

(Tont'g.) I put those (indicating) on the table and I was waiting for my check.

Q What then happened?

A I think that one or two of these letters (indicating) were presented to me for signature. I looked at them. If I thought they were right, I signed them.

Q Which "letters" are you referring to?

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2 A I'm talking about one having to do (examining exhibit)
3 The one addressed to Stone.

4 MR. ESTERMAN: (Indicating to Witness.)

5 THE WITNESS: (Reading) Plaintiffs'
6 Exhibit 3-A. The one addressed to the
7 Franklin National Bank, accepted by Mr.
8 Mastronardo, Plaintiffs' Exhibit 3-D
9 (indicating).

10 Q Now, were there any letters which you signed
11 during that closing?

12 A I'm trying to think. (Pause) I don't think I signed
13 any other letters. I think the checks were brought in. I
14 took this One-Hundred-Eighteen-Thousand-Dollar check (indi-
15 cating), Plaintiffs' Exhibit 3-C and endorsed it back to the
16 Roosevelt Capital Corporation and then I got out with the
17 Forty-Two-Thousand-Dollar check.

18 Q Now, about how long did the entire closing
19 take?

20 A Well, an hour and a quarter. An hour and a half.
21 That's all.

22 Q Did you execute and sign any other documents,
23 other than those you have indicated here?

24 A I don't think so.

25 Q Who presented those letters to you for

signature?

A I don't remember. They were put on the table (indicating). You know. You know I can't answer that question, because I don't know.

Q Was Mr. Pierson participating or observing?

A I don't think he was doing too much of anything.

Q Was Mr. Stone a participant or merely an observer?

A I think he participated more than Mr. Pierson. He was the attorney for the buying group.

Q Now, you stated the two checks were brought into the room. Who brought those checks in?

A I tell you truthfully, I can't give you the answer. The next thing I know, I saw the checks on the table (indicating).

Q Were the checks presented to you by Mr. Mastronardo?

MR. BERMAN: Objection.

MR. ESTERMAN: Objection. Repetitious.

A I just said I don't remember who did bring them in.

Q Were they brought in at the same time?

A At the same time as what?

Q As each other.

A Both checks were brought in the same time.

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Q Were they brought before or after you signed the letters you had requested?

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A I wouldn't sign the letters if the checks were not in.

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Q Now, at the outset of the closing, - first order of business, so to speak, did you present the endorsed shares?

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A I put -- That's the first thing. I then presented the endorsed shares of stock and I put them on the table (indicating).

12

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Q You received the checks before you signed the letters?

14

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A I would say it was a simultaneous thing.

16

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Q Well, that's a characterization.

18

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Physically, did you receive the checks in hand, before you physically signed the letters?

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A I can't say that this came first and this came second. I would like --

22

23

Q Is that because you could not recall?

24

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A (Cont'g.) -- to call to your attention that many instruments are signed and not deemed exchanged until all the documents are signed, ready for exchange, because some documents you must wait for, until others are signed; so, if you say they are done simultaneously at the same moment,

To?

A (Correct.) that wouldn't be physically possible, it was the intention that I got the checks before I turned over the shares of stock and that is what happened.

Q You are satisfied that is what occurred?

A Yes.

Q Had you signed the letters, but not delivered them prior to the receipt of the two checks (indicating)?

A That is correct.

Q So that you first placed the shares on the table. You then received the checks?

Strike that.

Q You first placed the shares on the table. You then executed --

A And then I received the checks.

Q And then you received the checks.

Were there any other documents you presented?

A (No response.)

Q Did you present the checks to the corporation?

A No.

Q Did you present anything else?

A No.

Q So, you first placed the shares on the table?

A (Nodding affirmatively.)

Q You then signed the letters you requested?

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A (Hesitating affirmatively.)

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Q But you do not recall who requested you to sign?

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A Yes. (Nodding affirmatively.)

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Q Now, looking at Plaintiffs' Exhibit 3-D for Identification (indicating), the first paragraph of that letter, which is addressed to Franklin National Bank and signed by you, states: "I have received from you today, two checks totaling One-Hundred-Sixty-Thousand Dollars, pursuant to agreement dated April 23, 1964, by and between Samuel Stone, Lomde Olanow and myself. I still owe you 1,166.7 shares of stock of Roosevelt Capital Corporation."

Pursuant to what theory did you owe Franklin National Bank 1,166.7 shares of Roosevelt Capital Corporation stock?

MR. BERMAN: Objection, as to form.

MR. ESTERMAN: (To the Witness)

You may answer.

THE WITNESS: All right?

MR. BERMAN: Yes.

MR. ESTERMAN: Yes, go ahead.

A Oh, I was told that those shares, which were short of the total amount, were to be given to the Franklin National Bank. Therefore, it was written that way.

Q By what were you told that?

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2 A Now that is a question I can't answer you. I can't
3 remember who told me and I understand that Mr. Mastrenardo,
4 who was in agreement with this, he acknowledged this
5 letter (indicating).

6 Q Was Mr. Mastrenardo present throughout the
7 closing?

8 A What do you mean when you say "present throughout"?
9 He was, all the way the others were. That doesn't mean he
10 didn't step outside. Physically, everybody was present.

11 Q Do you recall if any people left the room
12 during the course of the closing?

13 A Yes.

14 Q Do you recall who?

15 A All I can tell you is that I didn't.

16 Q Would you have any specific recollection of
17 others leaving and who they might have been?

18 A I think that others may have been -- Practically all
19 the others may have left, on a temporary basis.

20 Q Was anyone gone for more than ten minutes, to
21 your recollection?

22 A No. I can't tell you that.

23 Q (Reading) The first paragraph of Plaintiffs'
24 Exhibit 3-D for Identification.

25 "I will make every effort to procure these shares."

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Q (Reading, continuing) "In the event I am unable to deliver them properly endorsed to you within thirty (30) days, I will deliver to you my check for Ten Dollars, for each and every share which I do not deliver."

Does that correctly reflect the undertaking you made to the Franklin National Bank?

MR. BERMAN: Objection.

A I believe it does.

Q How did you undertake the sum of Ten Dollars, if you did not deliver the shares to the Franklin National Bank?

A Because we were getting One-Hundred-Sixty-Thousand Dollars, which was one-fifty-five, plus five, as I previously explained.

That's Ten Dollars a share.

Q Was your agreement to sell shares with Franklin National Bank --

MR. BERMAN: Objection.

The document recited it was between Olanow and the selling stockholders.

That is the nature of the agreement?

Q Did you have a separate agreement, other than that which has been designated "Plaintiffs' Exhibit 1 for Identification," to deliver shares or, in default, to pay

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1 money of Franklin National Bank?

2 A I think the obligation is delineated by Plaintiffs'
3 Exhibit 1 (indicating).

4 Q Does Plaintiffs' Exhibit 1 for Identification
5 state, in paragraph two: (reading) that the stock of Roose-
6 velt Capital Corporation is and transacted "to be delivered
7 free and clear of all responsibilities to Olansow and his
8 nominee"?

9 MR. BERMAN: Objection.

10 If that's what it says, it says so (indicating).

11 MR. ESTERMAN: (To Mr. Bracht) May I
12 see it?

13 MR. BRACHT: (Handing to Mr. Esterman.)

14 This is the actual one? (To the Witness)

15 MR. ESTERMAN: (Conferring with Witness.)

16 THE WITNESS: Yes.

17 Q Plaintiffs' Exhibit 1 for Identification does
18 so provide?

19 A Yes

20 MR. BERMAN: Objection.

21 Q And the closing which you are describing is
22 the closing pursuant to the agreement designated, "Plain-
23 tiffs' Exhibit 1 for Identification" (indicating)?

24 A I believe so, yes. It was.

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2 Q Then isn't it inconsistent with the require-
3 ments of Plaintiffs' Exhibit 1 for Identification, to under-
4 take to deliver the shares, or in default, money to Franklin
5 National Bank?

6 MR. BERMAN: Objection.

7 A The word "nominee" is in that part of the agreement
8 (indicating).

9 Q Did you at that time understand Franklin
10 National Bank to be the nominee of Olanow?

11 A I was told Franklin National Bank was taking care of
12 this thing and that's all I know and I don't know who told
13 me.

14 Q What do you mean?

15 A I think I had -- I think I was told,-- I was led to
16 believe that by Mastronardo, as much as anybody else.

17 I signed this (indicating) Plaintiffs' Exhibit 3-D
18 -- 3-E.

19 Q When you say you were "led to believe that by
20 Patrick Mastronardo," in what manner?

21 A He signed this agreement (indicating) 3-D.

22 Q Did you discuss the agreement with him?

23 A No. This agreement was drawn before.

24 Q He simply presented that to you for signature
25 and --

Tolmage

MR. HERMAN: Objection.

There is nothing in the witness's testimony that he presented it to the others.

Q Did Mr. Mastronardo present that to you for signature (indicating)?

A I can't answer that. I know that I signed it and he acknowledged it.

MR. BRACHTEL: (Conferring with Mr. Roosevelt.)

MR. EPPEN: (Conferring with Mr. Esterman.)

Q Mr. Tolmage, when did you learn you would be unable to deliver all shares of Roosevelt Capital Corporation at the closing?

A Well, I knew it when I came to the closing.

Q Did you know it prior to that time?

A I didn't have all the shares, so I knew it prior to that time.

Q How long "prior to that time"?

A Well, I expected the shares that morning, before I went to the closing. They did not come in. That's the best answer I can give you.

Q When did you advise the purchaser you would not be able to secure all the shares of Roosevelt Capital

Tolmage

Corporation?

A I believe, at the closing.

Q Mr. Tolmage, if you advised the other participants in the closing, or any of them at the closing that you would be unable to secure 1166.7 shares of Roosevelt Capital Corporation stock, then how could this letter, Plaintiffs' Exhibit 3-D for Identification, noting that fact, have been prepared prior to the closing?

A I didn't say that it was.

Q Then, you are saying now, that this letter agreement (indicating) was prepared during the closing?

A During the time of the closing. Yes.

Q At whose insistence?

A I don't remember.

Q Now, Mr. Tolmage, it is your testimony, I believe, that you cannot identify and do not recognize Plaintiffs' Exhibit 3-G for Identification (indicating and handing to Witness), which purports to be a copy of a letter from Ray Pierson to the Franklin National Bank?

A All I can categorically tell you is I did not see any such letter, or know of its existence, on May 14, 1964.

Q Now, that letter, by its terms, purports to request that the bank issue two checks, in the amounts of Forty-Five-Thousand and One-Hundred-Eighteen-Thousand Dollars.

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2 respectively, payable to your order and to be delivered to
3 you.

4 Q (Continuing) Do you know of that request
5 being made to the bank or to any bank officer by any person
6 at the closing, in your presence?

7 A I don't know of any request made to the bank, or the
8 bank's officer, at the closing?

9 Q Would it surprise you to know that the pur-
10 chaser of Roosevelt Capital Corporation, provided the cor-
11 poration with its own funds?

12 MR. BERMAN: Objection.

13 MR. BSTERMAN: Objection to the form
14 of that question.

15 Q Did you know that two checks, which you iden-
16 tified, respectively, in the amounts of Forty-Two-Thousand
17 and One-Hundred-Eighteen-Thousand Dollars, which you receiv-
18 ed the day of the closing, were charged against the account
19 of Roosevelt Capital Corporation?

20 A You're telling me that. I have no knowledge.

21 Q I am asking if you knew that, at the time
22 of the closing?

23 A No, I did not.

24 Q Did you, subsequently, learn that?

25 A I would say yes.

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2 Q How did you learn it?

3 A Well, in a dozen ways. I don't --

4 Q What was the earliest recollection?

5 A (Continuing) -- I don't recall what was it was told,
6 but I understood that happened.

7 Q When did you first learn that was the way it
8 happened?

9 A I can't even give you that date when it happened. I
10 can't even tell you when.

11 Q Can you state how?

12 A (Continuing) But, I think -- Is it in the complaint,
13 Mr. Brachtel? I don't remember.

14 MR. BRACHTEL: (To the Witness) In
15 the Government's complaint against Franklin
16 National Bank?

17 THE WITNESS: Yes.

18 MR. BRACHTEL: I don't think that that
19 complaint recites how you learned.

20 THE WITNESS: That certainly would
21 apprise me.

22 MR. BRACHTEL: You are speaking now
23 of the complaint in the Southern District
24 of New York, or the Eastern District of
25 New York?

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THE WITNESS: That is correct, the
Southern District action.

EXAMINATION BY

MR. BRACHTEL: (Continuing)

Q Against the Franklin National Bank?

A Yes.

Q Are you stating then, that is the first time
you learned?

A I can't answer that question as to when I first
learned about it.

Q Can you state how you first learned of it?

A No, I can't.

Q Did you learn that from Mr. Mastronardo?

MR. BERMAN: Objection.

A Mr. Mastronardo; no. I did not learn that from Mr.
Mastronardo.

Q Now, were you given any other documents, or any
things, other than the two checks for Forty-Two-Thousand and
One-Hundred-Eighteen-Thousand Dollars, during the closing?

A I have already told you what documents there were at
the closing, to the best -- the best of my recollection.

Q Now, you stated the execution of these letters
(indicating), transfer of the shares, the tender of the of-
ficers' and directors' resignations, the receipt of the

Tolmige

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1 checks were to be deemed to be simultaneous; is that cor-
2 rect?
3

4 A No. I want to say it this way: that I was supposed
5 to get paid the One-Hundred-Sixty-Thousand Dollars as soon
6 as I gave them the stock and the resignations and proved to
7 them that there was Three-Hundred-Five Thousand Dollars in
8 the assets of the corporation.

9 Q Were you aware during the closing that the
10 purchasers had difficulty in furnishing the purchase price?
11

12 A Not at all.

13 Q Was there any discussion at all that related
14 to the manner in which they would furnish to you the pur-
15 chase price of Roosevelt Capital Corporation?

16 A Not within my hearing.

17 Q You participated in no such conversation with
18 Mr. Mastronardo?

19 A Not at all.

20 Q Now, Mr. Mastronardo has stated, under oath,
21 in a prior deposition in this case --

22 MR. PIERMAN: Are you asking the wit-
23 ness something to refresh his recollection,
24 or are you cross-examining your own witness?

25 MR. BRACHTEL: No, I am not cross-
examining.

1 Tolmage

2 MR. ESTERMAN: If you wish to examine,
3 please refer to it.

4 MR. BRACHTEL: I am speaking of the depo-
5 sition, upon oral examination of Patrick J.
6 Mastronardo, in this case, conducted on June 6,
7 1972, in which the following questions and
8 answers were made.

9 (Handing to counsel.)

10 MR. ESTERMAN: What pages?

11 MR. BRACHTEL: I am reading from page 110
12 of that deposition.

13 MR. ESTERMAN: Okay.

14 MR. BRACHTEL: (Reading)

15 "Q What was your discussion with
16 the members of the buying and selling groups?

17 "A How we could resolve their problem;
18 that is, to effectuate the closing in a way
19 which would be suitable to all parties.

20 "Q What was the resolution or the
21 decision?

22 "A The resolution would be the
23 participants would make available \$187,000
24 to the buyers, representing the proceeds of
25 the national Treasury Bills, which would, in"

Tolmige

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MR. BRACHTEL: (Continuing)

"turn, enable me to issue the \$118,000
and the \$42,000 checks."

EXAMINATION BY

MR. BRACHTEL: (Continuing)

Q Was this, then, to be a loan from the selling
group to the buying group?

A. No loan was every discussed or contemplated.

MR. BRACHTEL: (Reading) Continuing.

"Q You just said that the selling group
was to make available \$187,000 to the buying
group for the purchase.

"How were they to make that available?

"A Everything was to be done simul-
taneously. This was a practical solution to
a business problem, an expedient you made on
my part, but with the underlying assumption
both parties were acting in good faith and,
had that been so, would not have caused a
ripple."

Q I ask you to relate that, if you care to
(handing to Witness), with that which transpired at the time
of the closing.

A I --

Tolmage

MR. BERMAN: Objection.

Mr. Brachtel, you are taking the testimony of one of your witnesses and attempting to cross-examine the other witness.

MR. BRACHTEL: That is not cross-examination.

MR. BERMAN: You asked the witness what happened and you asked specifically, and you received answers.

Now, you want to get assurances as to whether or not he was in agreement with Mr. Mastronardo.

MR. BRACHTEL: I will ask it, in this form.

Q Is Mr. Mastronardo, in his statement, in error, mistaken, or lying?

MR. BERMAN: Objection.

MR. ESTERMAN: That is improper as to whether he is "lying".

MR. BRACHTEL: The question is: Mr. Tolmage, whether the testimony given by Mr. Mastronardo, that I have read to you, in response to the questions I have read to you, is true or accurate; to your knowledge.

Tolmage

MR. BERMAN: Objection.

THE WITNESS: It is --

MR. ESTERMAN: (To the Witness)

Go ahead.

THE WITNESS: (Continuing) --not true
and it is not accurate.

Q In what respect would you state it is not
true or accurate?

MR. BERMAN: Objection.

A I would say to you, categorically, that I had no idea
about any members of the purchasing group getting any money.

I don't know where they got the idea. All I know is
I was presented with two cashier's checks being drawn on the
Franklin National Bank.

Q Now, with respect to Plaintiffs' Exhibit --

MR. ESTERMAN: (Handing to Mr. Bracht1.)

Q (Continuing) -- 3-A for Identification, Mr.
Tolmage, was it your testimony that the scratching out, if
you will, of the name "Patrick J. Mastronardo, Assistant
Cashier," underneath your signature (indicating), was done
by you?

A I believe so, because I signed the name. It wouldn't
make any sense. I signed my name. It wouldn't make sense
to have his name under mine. (Indicating.)

Tolmage

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Q But you did not write "to" (indicating), in the upper left, and "From" and your name in hand-letting (indicating) and "Address"; is that correct?

A No.

MR. BERMAN: Didn't we go through this already?

Q Would you have specific recollection of scratching out that name: "Patrick J. Mastromarado" (indicating)?

A That's the type of scratching I do. That's the only recollection I have.

Q Once, again, Mr. Tolmage, I would like to ask you if you have any recollection of Plaintiffs' Exhibit 3-G for Identification (indicating)?

MR. ESTERMAN: He answered three times and told you no.

I don't think it is proper to explore this, with the same question, each time.

MR. BRACHTEL: Well, then, we will use a different question.

Q Mr. Tolmage, I'm handing you the original of Plaintiffs' Exhibit 3-G for Identification; that is, the letter from Mr. Pierson to the Franklin National Bank,

Tolmage

requesting the issuance of the two checks which you acknowledged receiving at the time of closing.

MR. BERMAN: Is this another of the documents that he received from the Franklin National Bank (indicating)?

Was this from the Southern District case (to Mr. Roosevelt)?

MR. BRACHTL: I received it from Mr. Roosevelt (indicating).

MR. ROOSEVELT: That was not (indicating) in Mr. Bracht's file.

MR. BERMAN: The answer is yes.

MR. ROOSEVELT: Off the record.

(Discussion off the record)

Q (Handing paper to Witness.)

Mr. Tolmage, I ask you to examine the original of Plaintiffs' Exhibit 3-G for Identification, and tell me if, in the various places on the page, there are not to be seen impressions,-- not writings, but impressions, as if from horizontal pressings or lines (indicating)?

A (Taking and examining.) I just don't know what you are talking about.

MR. BRACHTL: Well, let me locate them for you. (Taking paper and examining.)

Tolmaga

1
2
3 MR. BRACHTL: (Continuing) Let the
4 record reflect that I am pointing to an
5 area near the top of the page, running from
6 about one inch to about two inches below the
7 very top of the page and starting from about
8 two-and-one-half inches from the left margin
9 and running to about three inches from the
10 right margin and I ask you if you don't see
11 there (indicating to Witness) some horizontal
12 line impressions on the page? (Handing)

13 THE WITNESS: (Examining paper.)

14 MR. BERMAN: You are not implying
15 when those impressions were placed on the
16 page?

17 MR. BRACHTL: Am I going to testify?

18 MR. BERMAN: Yes, Mr. Bracht1.

19 MR. BRACHTL: No. I am not prepared
20 to do so.

21 THE WITNESS: I don't know what your
22 question is, or what I see but I don't know
23 (indicating paper) what you are talking about.

24 Let me make it very clear, I never saw
25 this document (indicating). I never saw a
Xerox of it and it may be the first time I

Tolmage

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1
2 THE WITNESS: (Continuing) have seen
3 it,- today. I don't remember whether I saw
4 it in another examination before trial, long
5 ago.

6 When I talked about crossing this out
7 (indicating), I'm not talking about "horizontal".

8 I'm talking about up and down (indicating)
9 crossing out, that was on this thing (indicating).

10 MR. BRACHTL: (Examining paper.)

11 THE WITNESS: (Indicating) I characterized
12 the way I crossed it out.

13 EXAMINATION BY

14 MR. BRACHTL: (Continuing)

15 Q So that it will be your testimony that this
16 space (indicating) was not beneath the original of this
17 letter (indicating) at the time you signed it?

18 MR. ESTERMAN: I object.

19 MR. EERMAN: He didn't testify to that.

20 MR. BRACHTL: I asked him.

21 MR. ESTERMAN: Mr. Bracht1, if you want
22 to ask him a question, ask him a question.

23 Ask him the question.

24 MR. BRACHTL: Surely.

25 Q Mr. Tolmage, was the original of Plaintiffs'

Exhibit 3-G for identification, as called -- the original of Plaintiffs' Exhibit 3-A for identification, at the time you made such markings and signed the original of Plaintiffs' Exhibit 3-A?

A I don't -- I don't recall. I can only tell you this: I know I never saw this 3 --

Q "G"?

A "G" (indicating.) That's all I can tell you.

Q Now, at the closing, Mr. Tolmachev, did you receive a check for One-Thousand Dollars from Mr. Olanow?

A Not at the closing. Somewhere around that time, I don't have.

Q Do you recall where or when that took place?

A I'm not at all sure, but I -- it may have been at the closing. I'm not sure, but I did get a check of One-Thousand Dollars from Mr. Olanow.

Q Was that a personal check from Mr. Olanow?

A Yes.

Q What was it?

A For my doing some legal work for the Roosevelt Capital Corporation group.

Q Was that anticipatory payment, or for services rendered?

A No. Anticipatory payment.

Tolmage

MR. BERMAN: No, comm.

MR. ESTERMAN: The way you answered,

Mr. Tolmage, was: "No anticipatory payment."

THE WITNESS: No. It was for anticipatory work.

Q What was the work contemplated?

A Taking -- To file certain statements, or forms, with the Small Business Administration, indicating a change of officers.

MR. BRACHTEL: Off the record.

(Discussion off the record)

This deposition of Mr. Sidney Tolmage is adjourned to a date to be agreed upon and at the mutual convenience of all parties: the witness and witness's counsel.

(WHEREUPON, at approximately one o'clock, p.m., the taking of testimony was adjourned.)

Subscribed and sworn

to before me this

_____ day of _____, 1973.

TOLMAGE

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INDEXWITNESSPlaintiffs:PAGE

Sidney Tolmago.

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EXHIBITSFor Identification

1	6-pages dated 4-23-64	6
2	Letter dated 5-14-64	14
3-A	" " 5-14-64	29
B	1-page, \$42,000 check	36
C	" " \$118,000 "	37
D	Letter dated 5-14-64	40
E	Copy of Assignment 5-14-64	38
F	" " Cert. Corp. Res. "	42
G	" " Letter dated 5-14-64	41

C E R T I F I C A T E

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS.:

I, LEO RASIKIN, a Notary Public
within and for the State of New York,
do hereby certify:

That the witness whose examination
is hereinbefore set forth was duly sworn
and that such examination is a true re-
cording of the testimony given by such
witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, and that
I am in no way interested in the out-
come of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand this 12th day
of March, 1973.

Leo Rasikin

AGREEMENT made as of the 28th day of April, 1964,

by and between S. LONNIE OLANOW, residing at 214 Chilean Avenue, Palm Beach, Florida, (herein called "Olanow") and SIDNEY TOLMAGE and such other Stockholders of ROOSEVELT CAPITAL CORP., as may subscribe this agreement prior to expiration date of the letter of credit and become a party herein (herein collectively called "Stockholders").

WITNESSETH:

WHEREAS,

(a) Roosevelt Capital Corp., (herein called "Roosevelt") is a small business investment corporation organized by and under the laws pertaining to such corporations and under the jurisdiction and control of the Small Business Administration;

(b) The parties contemplate that Olanow shall purchase and the Stockholders sell all of the issued and outstanding stock of Roosevelt upon the terms herein set forth,

NOW, THEREFORE, it is agreed as follows:

1. Olanow shall purchase and the Stockholders shall sell all of the issued and outstanding stock of Roosevelt for an aggregate purchase price of One Hundred and Sixty Thousand (\$160,000.) Dollars payable at closing as herein provided. If all the outstanding shares of Roosevelt Capital Corp., are not offered for sale, Olanow may at his option, purchase less, but shall not be required to, without his prior written consent, purchase such of said issued and outstanding stock offered after the closing..

2. On or before May 1, 1964, Olanow shall cause to be issued by the Bankers Trust Company of New York, an Irrevocable 30-day letter of credit in the sum of One Hundred and

[Handwritten signature]
4/28/64 JH

Sixty Thousand (\$160,000.) Dollars which shall provide for payment of said sum against delivery of 1550 shares of the capital stock of Roosevelt, which number of shares the Stockholders warrant and represent to be the entire issued and outstanding shares of said Corporation, said stock to be delivered free and clear in all respects, duly endorsed for transfer to Olanow or his nominees and with all necessary transfer stamps thereon duly affixed. If closing is not had as herein provided within said 30-day period, said letter of credit shall expire by its terms.

3. The Stockholders shall at Olanow's expense, cause Roosevelt forthwith to prepare amendments to the licensing proposal of Roosevelt for submission to and approval of the Small Business Administration, which amendments shall provide for such change in officers and directors of Roosevelt as shall be requested by Olanow and for change of address. The Stockholders and Olanow shall fully cooperate in furnishing all information and documents necessary to the preparation of said amendments. If same are not approved by the Small Business Administration within 30 days from date of the issuance of said letter of credit, Olanow ^{will} ~~may at his option~~ cause title to be closed as herein provided on or before the date of expiration of said letter of credit, provided such transaction is permitted by the Small Business Administration and the Stockholders and Roosevelt are not prohibited from doing so. The closing shall be held at such time and place in New York City, and on such date as Olanow ^{or the Stockholders} may fix, provided same is held on or before the expiration date of said letter of credit. Notice of such closing shall be given by Olanow ^{or the Stockholders} at least 48 hours prior to the date fixed for same, but not prior to 25 days from date hereof unless agreed to by the Stockholders.

4. ~~Notwithstanding anything herein contained if the Small Business Administration has not approved such amendments on~~

~~or before the expiration date of said letter of credit and if Olanow~~
 has not elected to close by notice in writing as herein provided without
 such approval, this agreement shall at the expiration of said 30-day
 period be deemed terminated, null and void and of no further force and
 effect, neither party shall have any further obligations hereunder and
~~said letter of credit may expire by its terms.~~ If, at closing, less
 than 100% of the issued and outstanding stock is accepted by Olanow,
 the price for such stock per share shall be the sum of \$160,000.00
 divided by 1550. In addition, ^{lesser 51% of} if all Stockholders of Roosevelt have not
 subscribed this agreement to Olanow, the latter may at his option forth-
 with terminate this agreement, whereupon same shall be null and void
 and of no further force and effect.

5. At closing, against payment of the price of stock to be
 purchased hereunder, the Stockholders shall deliver to Olanow, the
 following:

(A) All books, records and documents pertaining
 to Roosevelt including but not limited to stock and minute books, tax
 returns, contracts, books of accounts and the assets of Roosevelt as
 hereinafter set forth subject to the liabilities as hereinafter set forth.

(B) Resignations of the present officers and
 directors of Roosevelt as requested by Olanow.

(C) The stock to be purchased duly endorsed with
 transfer tax stamps thereunto affixed as hereunto stated.

(D) Such other papers and documents as may be
 required to effectuate the transfer herein.

6. The Stockholders warrant and represent that

(A) Roosevelt is a New York corporation duly
 organized by and under the Small Business Investment Act of 1958 as
 amended, is validly existing and in good standing under such laws and

has the power to own its property and carry on its business as a small business investment corporation.

(B) Roosevelt has duly complied with all of the laws, regulations, rules, order and applicable directives or releases of the United States Government and of any administration, department and authority thereof including the Small Business Administration and of all states and any subdivisions thereof in which it is authorized to do business or is engaged in business.

(C) At the time of the closing, the assets of Roosevelt will consist of cash or United States Treasury Bills, \$82,000.00 due April 30, 1964; \$105,000.00 due May 14, 1964, and the balance cash, for a total of \$305,000.00.

Its liabilities will consist of \$150,000.00 of loans by the Small Business Administration.

The Stockholders may avail themselves of the proceeds of the letter of credit heretofore mentioned, to make up any part of the aforesaid \$305,000.00. It is distinctly understood that Roosevelt at the present time does own a portfolio of investments which the Stockholders will simultaneously with the closing herein, purchase at par, the price for same to constitute part of the aforementioned cash balance.

(D) There are no contingent liabilities of whatsoever kind or nature, tax or otherwise of Roosevelt.

(E) The authorized capital stock of Roosevelt consists of 1550 shares of common of which 1550 are duly and validly issued and outstanding, fully paid and non-assessable and 1000 shares of preferred stock, none of which have been issued. Same will be the sole issued and outstanding shares as of closing date and no shares are subject to issuance on account of any option, conversions or other

rights to purchase same.

(F) Roosevelt has not declared and shall not declare or pay any dividend or declare or make any distribution or authorize the creation or issuance of any stock nor will it take any action pertaining to reorganization, consolidation, merger, reclassification, change in capital structure or in any respect engage in any business without the prior written consent to Olanow.

(G) Roosevelt has filed all necessary and appropriate tax returns and has paid all taxes. It has good and marketable title to the assets set forth in 5 (C) hereof and none of the same is subject to any encumbrance, lien or charge of any kind or nature.

(H) There are no contracts presently outstanding to which Roosevelt is a party and no legal actions, governmental investigations or other proceedings in which it is engaged or threatened.

(I) They are the owners free and clear and unencumbered in all respects of all stock to be sold by them herein.

(J) Each of the foregoing warranties and representations shall apply from the date hereof to the closing date and shall survive such closing.

7. (A) All notices shall be by registered mail or certified mail. Notices to the Stockholders shall be care of

Sidney Tolmage, Esq.
Tolmage and Harris, Esqs.
20 Vesey Street
New York 7, New York.

All notices to Olanow shall be care of

David Gleiberman, Esq.
30 Broad Street
New York, New York

(B) The parties agree that no broker brought about this transaction, except that Olanow represents that Al Abrams of 40 Exchange Place, New York City acted as a finder and that Olanow

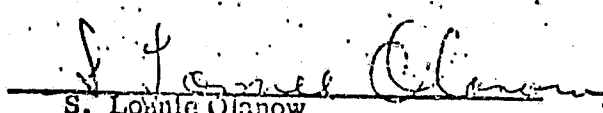
will pay him any commission or fee payable to him.

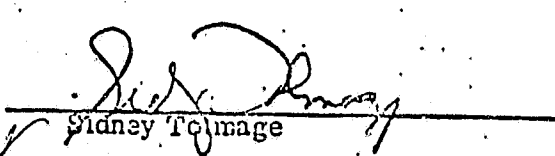
(C) No waiver hereunder shall be valid unless in writing and any waiver so given shall be limited solely to the matter waived and shall not bind the party so waiving on any other or future matter. This agreement may not be cancelled, modified, altered or amended in any respect, unless subscribed by all of the parties hereto in writing.

(D) The representations, warranties and agreements made hereby by the parties shall survive the closing hereunder.

(E) This agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, representatives and assigns.

(F) This agreement may be separately executed in separate counterparts by the Stockholders at any time prior to the expiration day of the letter of credit hereinbefore provided for, and the various counterparts taken together shall constitute a single agreement.


S. Lonnie Olanow


Sidney Toimage

3-6-73
Pl. Ed. [Signature]
for Rev.

May 4, 1964

Mr. S. Lennie Olanow
c/o Fisher, Gleiberman & Ezrine, Esqs.
30 Broad Street
New York, New York

Re: Roosevelt Capital Corp.
Our file #3832

Dear Mr. Olanow:

On examining the contract which we executed on April 23, 1964, I notice that there was a typographical error. The number of shares that were set forth therein was 1550. The number should be 15,500.

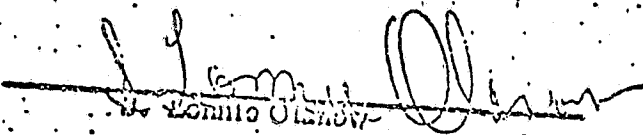
Would you be kind enough to sign a copy of this letter to indicate that in every place where the number 1550 appears, you consent that it be changed to 15,500.

Very truly yours,

TOLMAGE AND HARRIS

Sidney Tolmage

ST:EK


Lennie Olanow

~~Pls get 2~~
~~2/19/65~~
EXHIBIT J

506a

FRANKLIN NATIONAL BANK

INTERNATIONAL BANKING DEPARTMENT

MARKET SQUARE, 100 PRATT STREET

NEW YORK, N. Y. 10015

May 14, 1964.

Samuel Stone, Esq.
150 Broadway
New York, N. Y.

Re: Sale of Stock of Roosevelt Capital Corporation

Dear Sir:


I am confirming to you that I have today instructed Mr. William Wallace, Jr., Vice President of the Franklin National Bank at Garden City, N. Y. to release to the Roosevelt Capital Corporation \$187,000. the proceeds of Treasury bills which were on deposit with the Garden City Branch of Franklin National Bank to the credit of the Roosevelt Capital Corporation.

Very truly yours,

[Signature]
PATRICK J. McKEE
Assistant Cashier

FRANKLIN → SIDNEY TOLMAGE
TOLMAGE & HARRIS
20 VESEY STREET
NEW YORK 7, N.Y.

3-6-73 507a
Pl. Ed. 3B For J. L. L.
(R)

 **FRANKLIN NATIONAL BANK** 7 531418
MINEOLA, N. Y. May 14, 1964
50-1211
214
PAY TO THE ORDER OF **SIDNEY TOLMAGE**
FRANKLIN NATIONAL BANK OFFICIAL CHECK
MAY 20 1964
Roosevelt
AUTHORIZED SIGNATURE
42000 AND 00 CTS
0004200000

P. L. F. E. 24
4/18/64 213

Sidney Tolmaga
PAY TO THE ORDER OF
IRVING TRUST COMPANY
W. 42ND STREET, 12 FLOOR
NEW YORK 36, N. Y.
TOLMAG, HARRIS, SPECIALTY
FIRM, NEW YORK
1-67
CH 1534 33506
BC 9964 MAY 20 64 C003
NEW YORK

EXHIBIT 1-3

508a

3/4/72

FRANKLIN NATIONAL BANK 7 531417

MINCOLA, N. Y. May 14, 1964

50-1211
214

PAY TO THE ORDER OF **SIDNEY TOLSON**

2 FRANKLIN NATIONAL BANK **SEVENTEEN HUNDRED AND 00 CTS**

FRANKLIN NATIONAL BANK

MAY 13 1964

ROOSEVELT

OFFICIAL CHECK

[Signature]
AUTHORIZED SIGNATURE

PH 0643
4/8/65

00211 12111

0011800000

Pay to the order of
the President of Capital

[Signature]
MAY 13 1964

ENCLOSURE

509a

Pl. E 3/6/73
3D
For Henry
(LR)

SIDNEY TOLMAGE
20 Vesey Street
New York 7, N.Y.

May 14, 1964.

Franklin National Bank
130 Pearl Street
New York, N. Y. 10015

Gentlemen:

I have received from you today two checks totaling \$160,000 pursuant to an agreement dated April 28, 1964 between S. Lennie Olmeyer and myself. I still owe you 1166.7 shares of stock of Roosevelt Capital Corporation.

I will make every effort to procure these shares. In the event I am not able to deliver these shares properly endorsed to you within thirty days from date hereof, I will deliver to you my check for \$10.00 for each and every share which I do not deliver.

Yours very truly,

Sidney Tolmage

Rec'd
Franklin Nat Bank
May 14 1964
Henry

Effect
Handwritten notes and signatures

3/6/73

Pl. Ex. 3E For [Signature]
(JP)

KNOW ALL MEN by these presents, that
Roosevelt Capital Corporation, a corporation organized and
existing under and by virtue of the laws of the State of New York,
with its principal place of business at 600 Old Country Road, Garden
City, New York, in consideration of One (\$1.00) Dollar and other
good and valuable consideration paid by ROOSEVELT CAPITAL
COMPANY, with its principal place of business at 600 Old Country
Road, Garden City, New York, (herein called "Assignee), hereby
assigns to the assignee, all of its right, title and interest in and
to,

(1) a certain debt owing by The Sorbel Co. Inc.,
together with the notes and all collateral security securing said
debt;

(2) A certain debt owing by Alho Corporation,
together with the notes and all securities and collateral in
connection therewith.

(3) All the capital stock and debenture bonds which
Roosevelt Capital Corporation owns in a corporation known as
National Automation Corporation.

IN WITNESS WHEREOF, the undersigned has hereunto
signed its name and affixed its seal the 14th day of May, 1964.

Roosevelt Capital Corporation

By [Signature]
President

the undersigned, Secretary of

ROOSEVELT CAPITAL CORP.

DO HEREBY CERTIFY that at a meeting of the Board of Directors of said corporation, duly held on the 14th day of May, 1964 a quorum being present, the following resolutions were unanimously adopted and recorded in the minute books of said corporation, kept by me, and are in accord with and pursuant to the charter and by-laws of said corporation, and are now in full force and effect, to wit:

RESOLVED, that

1. FRANKLIN NATIONAL BANK, Mineola, N. Y. (hereinafter referred to as Bank) be and hereby is designated as a depository of this corporation, and it is hereby authorized to pay, cash or otherwise honor and charge to this corporation any and all checks, notes, drafts, bills of exchange, acceptances, orders or other instruments for the payment of money or the withdrawal of funds, when signed, made, drawn, accepted or indorsed on behalf or in the name of this corporation by any person then holding any of the following offices or by any of the following named signatories, without counter-signature or co-signature except to the extent indicated as follows:

2. Said Bank is further authorized to pay, cash or otherwise honor and charge to this corporation any such instrument without regard to any notation on any part thereof indicating the effect, purpose or condition of its issuance, delivery, receipt or acceptance, and without regard to any alteration, defacement or erasure of such notation, and said Bank is expressly relieved of any duty on its part to pass upon the regularity of such notation, or to make any inquiry in respect thereof or in respect of any alteration, defacement or erasure thereof. Said Bank may conclusively assume that the date of any such instrument, acceptance or indorsement is the true date of the making, drawing, acceptance or indorsement, as the case may be, completed in each instance by delivery on that date.

3. Said Bank is hereby authorized to pay, cash or otherwise honor and charge to this corporation any such instrument and any instrument payable to or held by this corporation when indorsed as aforesaid, and also to receive same for credit to the account of or in payment from the payee, indorsee or any other holder thereof (including any officer, agent or signatory of this corporation), without limitation of amount and without inquiry as to the circumstances of issue, negotiation or indorsement thereof or as to the disposition of the proceeds thereof, even if drawn, indorsed or payable to cash, bearer or to the individual order of any signing officer, agent or signatory, or tendered in payment of his individual obligation.


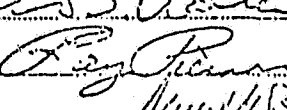
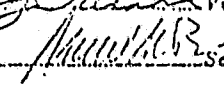
4. Indorsements on behalf of this corporation upon any and all commercial paper of any kind deposited by or on behalf of this corporation with the said Bank for credit or for collection or otherwise, may be made, affixed or imprinted (manually or by stamp impression) by any one of the foregoing officers or signatories or by any other person authorized or purporting to be authorized so to do, and any case the indorsement may bear the name of this corporation alone without specifying the person who made, affixed or imprinted the same or his authority so to do.

5. Any one of the foregoing officers of this corporation is hereby authorized to borrow money and to obtain credit for this corporation from said Bank on such terms as may seem to him advisable, and to deliver notes, drafts, acceptances, agreements and any other obligations of this corporation therefor in form satisfactory to said Bank, signed as designated in paragraph 1 above, and as security therefor to assign, transfer, hypothecate, mortgage, pledge, trustee, withdraw, exchange and substitute any stocks, bonds, securities, bills and accounts receivable, bills of lading, warehouse receipts or any other property of this corporation, with full authority to indorse or guarantee the same in the name of this corporation, to execute and deliver all instruments of assignment, transfer, hypothecation, mortgage, pledge and trust, and to affix the corporate seal. Any one of the officers or any one of the aforementioned signatories of this corporation acting alone is hereby authorized to discount any bills receivable or paper of any kind (negotiable or otherwise) with full authority to indorse the same in the name of this corporation.

6. All the foregoing authorities shall and continue in full force and effect until revoked or modified by written notice actually received by said Bank setting forth a resolution to that effect stated to have been adopted by the Board of Directors of this corporation, and signed by one purporting to be the secretary or an assistant secretary of this corporation and bearing the purported seal of this corporation; and said Bank is hereby authorized at all times to rely upon the last notice, certificate or communication received by it, when so authenticated, as to any resolution of this corporation, or as to the persons who from time to time may be officers or signatories of this corporation, or as to their respective signatures and/or as to any other corporate matters, and Bank shall be harmless in such reliance.

7. That the secretary (or any assistant secretary) of this corporation is hereby authorized to certify and deliver to said Bank copies of these resolutions, and that the signatures of the president (or any vice-president) and the secretary (or any assistant secretary) of this corporation at the foot of the certificate containing these resolutions shall constitute such certificate and resolutions an agreement by this corporation with said Bank with respect to all matters set forth in said certificate and resolutions.

I FURTHER CERTIFY that the persons herein designated as officers of this corporation have been duly elected to and now hold the offices in this corporation set opposite their respective names, and that the following are the authentic, official signatures of the said respective officers and of the named signatories who are not corporate officers, to wit:

Stewart Wallen		President
Name (Print or Type)	(Signature)	
Ray Pierson		Vice-President
Name (Print or Type)	(Signature)	
Samuel Stone		Secretary
Name (Print or Type)	(Signature)	
		Treasurer
Name (Print or Type)	(Signature)	

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation by order of the Board of Directors this 14th day of May, 1964
AFFIX SEAL, BELOW

I, the undersigned, President of the corporation above named, do hereby certify that the foregoing certificate is in all respects true and contains a true copy of the resolutions regularly adopted by the Board of Directors of said corporation in the manner therein stated.

Vice-President

512a

2/6/74 V.L. to 36 For

May 14, 1964

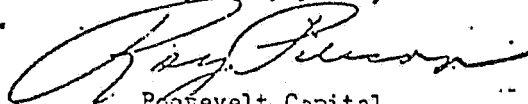
LR Allen

Franklin National Bank
130 Pearl Street
New York, New York 10015

Gentlemen:

Please issue your official checks to
order of Sidney Tolmage in the amounts of
\$42,000.00 and \$118,000.00 for delivery
to him.

Very truly yours,



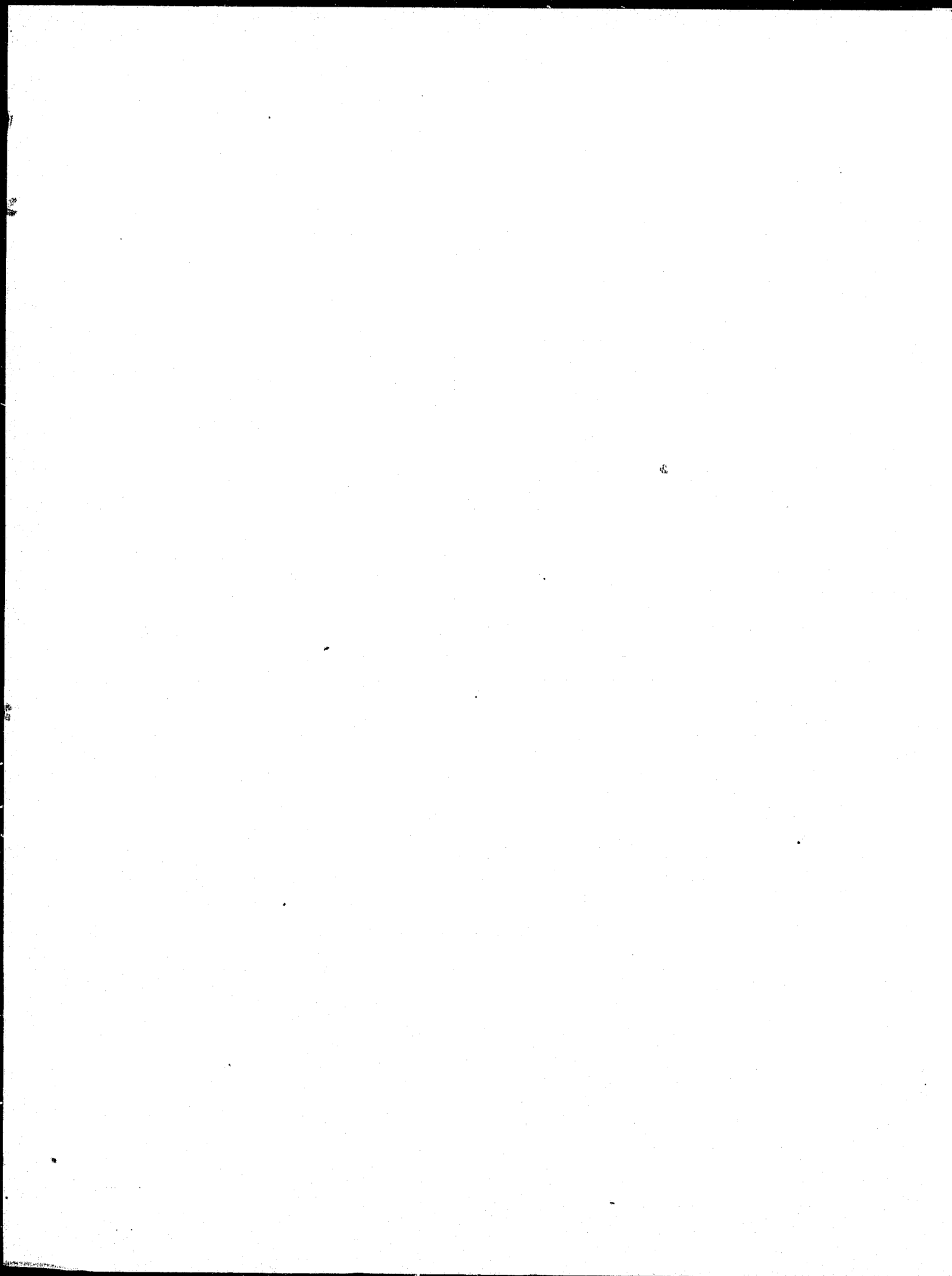
Roosevelt Capital
Corporation

EXHIBIT Q

513a

**DEFENDANT'S PAPERS IN OPPOSITION TO
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT, FILED ON JUNE 1, 1973**

**Affidavit of Patrick J. Mastronardo, Vice-President—
Finance, GSF Corporation, Sworn to May 30, 1973**



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of the
funds, assets and property of
ROOSEVELT CAPITAL CORPORATION,

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.
-----X

67 Civ. 439

AFFIDAVIT

STATE OF NEW JERSEY)
 : ss.:
COUNTY OF BERGEN)

PATRICK J. MASTRONARDO, being duly sworn,
deposes and says:

1. I am Vice President - Finance of The GSF Corporation with principal offices in Midland Park, New Jersey. At the time of the events described in this affidavit, I was an Assistant Cashier of Franklin National Bank ("the Bank") assigned to its Hanover Square branch at 130 Pearl Street in Manhattan.

2. Prior to relating the pertinent events of May, 1964, let me make a few things absolutely clear:

a. At no time during the period in question did I know the extent and nature of the assets of Roosevelt Capital Corp. ("RCC"), other than whatever funds were to be found in its account at the Bank.

b. At no time during the period in question did I know the extent and nature of the liabilities of RCC, or, for that matter, whether it even had any debts.

c. At no time during the period in question did I know the capital structure of RCC.

d. At no time did the Bank make any loans or advances to any of the purchasers of RCC. More specifically, no loans or advances of any kind were made by the Bank in connection with the purchase and sale of RCC on May 14, 1964.

3. I understand that RCC commenced a banking relationship with the Bank in early 1962. At that time, a checking account was opened by RCC at the Bank's Roosevelt Field office in Garden City, New York, which was headed by Mr. William Wallace, Jr., who was a Vice-President of the Bank at the time. In addition to the usual activity in the checking account by RCC, the Bank also arranged, at the instructions of RCC, for the investment of some of the cash in the account in short-term United States Treasury bills. I further understand that RCC never borrowed any money from the Bank and the Bank's records do not reflect any information concerning RCC's assets and liabilities (other than whatever funds were found in the checking account or invested in Treasury bills).

4. In May of 1964, the Bank was preparing to open a new branch in Kanover Square. The official opening date of the branch was scheduled for Monday, May 18,

1964 and a reception was held at the branch on the evening of May 13, 1964 in connection with this opening. In the course of this reception, which both Mr. Wallace and I attended, one Lonnie Olanow introduced himself to Mr. Wallace and identified himself as a prospective purchaser of RCC. Mr. Wallace then introduced Mr. Olanow to me.

5. Mr. Olanow informed me about his prospective purchase of RCC -- a corporation of which I had never heard -- said that the closing was scheduled for the next morning (May 14), and asked whether the Bank could accommodate him and the others involved in the transaction by allowing them to use one of the conference rooms at the Hanover Square branch for the closing. I acceded to his request.

6. The following morning, May 14, 1964, Mr. Olanow came to the Bank with a man he introduced as his associate in the purchase, Mr. Ray Pierson. In addition, a Mr. Samuel Stone, who was introduced as the attorney for the purchasers, and Mr. Sidney Tolmage, the attorney for the sellers, also arrived at the Bank for the closing. I believe that others, whose names I cannot recall at this time, were also present at the closing. All of these individuals were ushered into a third floor conference room and I returned to my work at my desk on the platform.

7. Prior to the closing, neither Mr. Olanow, Mr. Pierson, Mr. Stone, nor any member or representative of the purchasing group, had approached the Bank to arrange

for the financing of the proposed purchase of RCC. Nor was any such approach to the Bank made by the selling group or any representative thereof. In fact, as I mentioned above, I had never even heard of RCC or any of its principals or prospective purchasers prior to the reception of May 13. The only connection between the Bank and the transaction at that point in time was the gratis use of the Bank's conference room for a private closing of a purchase-sale transaction.

8. After the closing had been going on for some time, either Mr. Olanow or Mr. Pierson came down from the third floor conference room to my desk on the first floor platform and told me a problem had arisen. I was told that the purchasers were supposed to make the payment for the corporate stock by way of certified checks, but that, unfortunately, they were from out of town and could not get checks certified at this time. I was also informed that RCC had available to it \$187,000 in cash representing the proceeds of matured Treasury bills. I was requested to accommodate both the purchasing and selling groups by issuing two official checks totalling \$160,000 against the funds contained in the RCC account at the Bank.

9. I telephoned the Roosevelt Field branch where the RCC checking account was then maintained, and verified that sufficient funds were on deposit in RCC's account to cover the amounts of the two checks that were requested. A letter from Mr. Tolmage (on behalf of the

sellers) to Mr. Stone (on behalf of the purchasers) was given to me confirming that the sellers had instructed the Bank's Roosevelt Field branch to release the \$187,000 to the credit of RCC. I also ascertained that Tolmage had authority to issue this instruction. The text of the letter reads as follows:

"I am confirming to you that I have today instructed Mr. William Wallace, Jr., Vice President of the Franklin National Bank at Garden City, N.Y. to release to the Roosevelt Capital Corporation \$187,000, the proceeds of Treasury bills which were on deposit with the Garden City Branch of Franklin National Bank to the credit of the Roosevelt Capital Corporation."

10. The necessary authorization to the Bank to issue the official checks was executed and delivered. Specifically, a new RCC account was opened at the Hanover Square branch; corporate resolutions and signature cards were delivered authorizing its officers, including Messrs. Pierson and Stone, to issue instructions with respect to the RCC funds; and a specific letter of instruction from RCC was delivered to the Bank directing it to issue the checks. This letter reads as follows:

"Gentlemen:

"Please issue your official checks to order of Sidney Tolmage in the amounts of \$42,000.00 and \$18,000.00 for delivery to him.

"Very truly yours,

/s/ Ray Pierson
"Roosevelt Capital Corp."

11. After the availability of the funds against which the official checks could be issued was verified and the necessary corporate instructions were received by the Bank to issue the checks, I arranged for their issuance and delivered them to either Mr. Pierson or Mr. Olanow in the presence of the other participants in the closing.

12. Following delivery of the two checks, I observed Mr. Tolmage endorse the \$118,000 check over to RCC, the check thereafter being deposited in the RCC checking account which had been opened at the Hanover Square branch that day. At the time, I overheard a conversation which described this transaction as a payment by the sellers for assets of RCC which were being repurchased by them from RCC.

13. When the two checks were issued, I prepared a debit memorandum which debited the amounts of those checks to RCC's account. Since the Hanover Square branch, at which the new RCC checking account had been opened, was not yet officially open for business, my debit memorandum was evidently misrouted and, instead, the debits for the two checks were entered in the RCC account at the Roosevelt Field branch which was at the time the only other RCC account with the Bank. On the same day, a credit for the proceeds of the Treasury bills which were on deposit at the Roosevelt Field branch was entered in RCC's account at Hanover Square. According to the Bank's records, an offsetting credit in the amount

of \$160,000 was posted to the account at Roosevelt Field the following day, May 20, to correct the debits misposted to this account. When the account was closed on May 26, and I learned that the appropriate debits had not as yet been posted to the account at Hanover Square, I had the bookkeeping entries corrected.

14. I repeat:- At no time did I know the extent of RCC's assets, liabilities, or capital. I knew that RCC had substantial sums on deposit at Franklin, but I did not know what cash and other assets, if any, it had elsewhere. I also did not know the nature of RCC's capital structure, nor whether the corporation had any creditors.

15. I understand from the Bank's counsel that the plaintiffs contend that the two checks issued by the Bank were a personal obligation of Mr. Ray Pierson to the Bank -- in effect, a loan by the Bank to Mr. Pierson. That is simply not so. Nor could it be: I had never met Mr. Pierson prior to May 14. And I do not believe that any other officer of the Bank had ever met him before. Neither I, nor the Bank, had any idea of Pierson's credit standing. Pierson never requested the Bank to make a loan to him, and, in fact, if such a request had been made, it would have been denied because we were not acquainted with him or his credit. Pierson did not sign any note or loan agreement, furnish a financial statement, or deliver any collateral to secure such a loan. No terms of payment, maturity or rate of interest were ever discussed. Moreover, I was not empowered at that time

to make such a loan, whether secured or otherwise.

16. As I mentioned above, I was told that the two bank checks were necessary because the purchasers were from out of town and therefore could not produce certified checks. However, I knew nothing of the exact nature of the transaction whereby \$160,000 of RCC's funds were given to Tolmage. I was under the impression at the time that this was some sort of short-term accommodation and that the purchasers would deposit an equivalent amount of funds in RCC's account. However, this was only an impression I drew from the circumstances. For all I knew, the transaction might have been a loan by the corporation to the purchasers, a dividend by the corporation to its stockholders, a reduction of capital, a payment for the purchase or redemption of stock, a gift, or any other perfectly ordinary transaction.

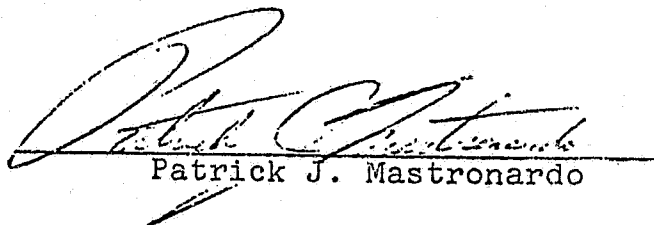
17. Near the end of the closing, I was requested to hold in safekeeping over the weekend the RCC shares that had been brought to the closing. Again, purely as an accommodation, I acceded to the request. I was also informed that some certificates were still outstanding and that when these were produced by the sellers (or their cash equivalent), they would be given to me and added to the others. I was given a letter confirming the foregoing.

On May 20th, I delivered all the stock in my possession to Mr. Pierson and received a receipt therefor.

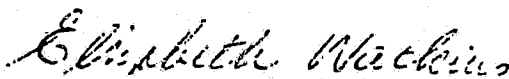
When the missing stock certificates were received by me, I also delivered them to the purchasers and received another receipt. These certificates were never held by the Bank as collateral security for any loans - especially for loans that never existed.

18. After the closing, I arranged for a credit check of both Pierson and Olanow, as is normally done with all new accounts. Unfavorable reports were received about Mr. Olanow and I requested him to make other banking arrangements for himself, RCC and the other corporations that he and his associates had introduced to the Bank. Mr. Olanow asked that a few days be allowed to lapse before closing the accounts so as to allow outstanding checks to clear and to make other banking arrangements.

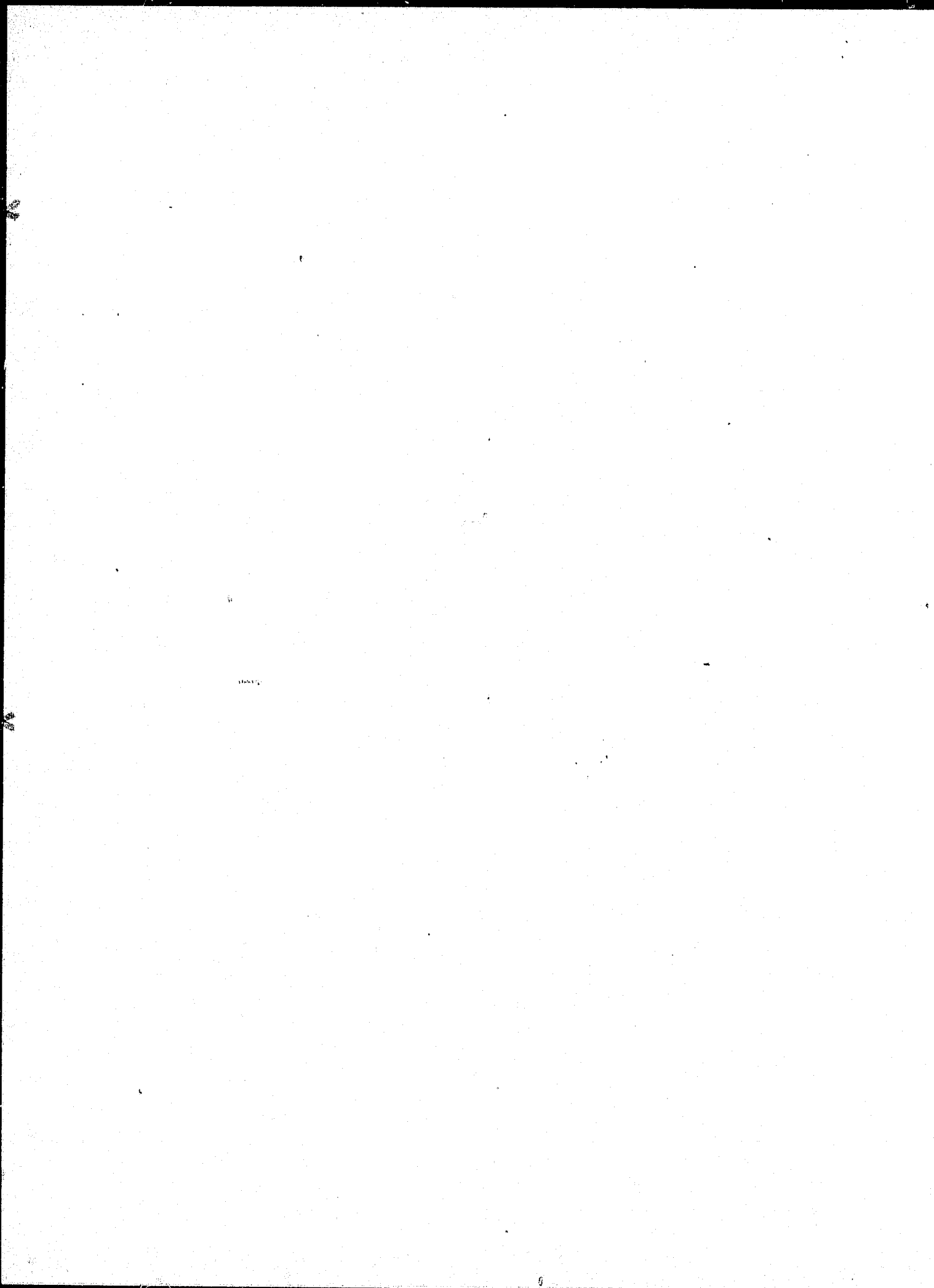
19. The RCC account was closed on May 26, 1964, at which time I arranged for the adjustment to correct the initial failure to charge the RCC account at Hanover Square for the two bank checks. Closing out the account, I delivered on May 26 to Mr. Pierson a certified check payable to RCC in the sum of \$67,000, that being the remaining balance in the account.


Patrick J. Mastronardo

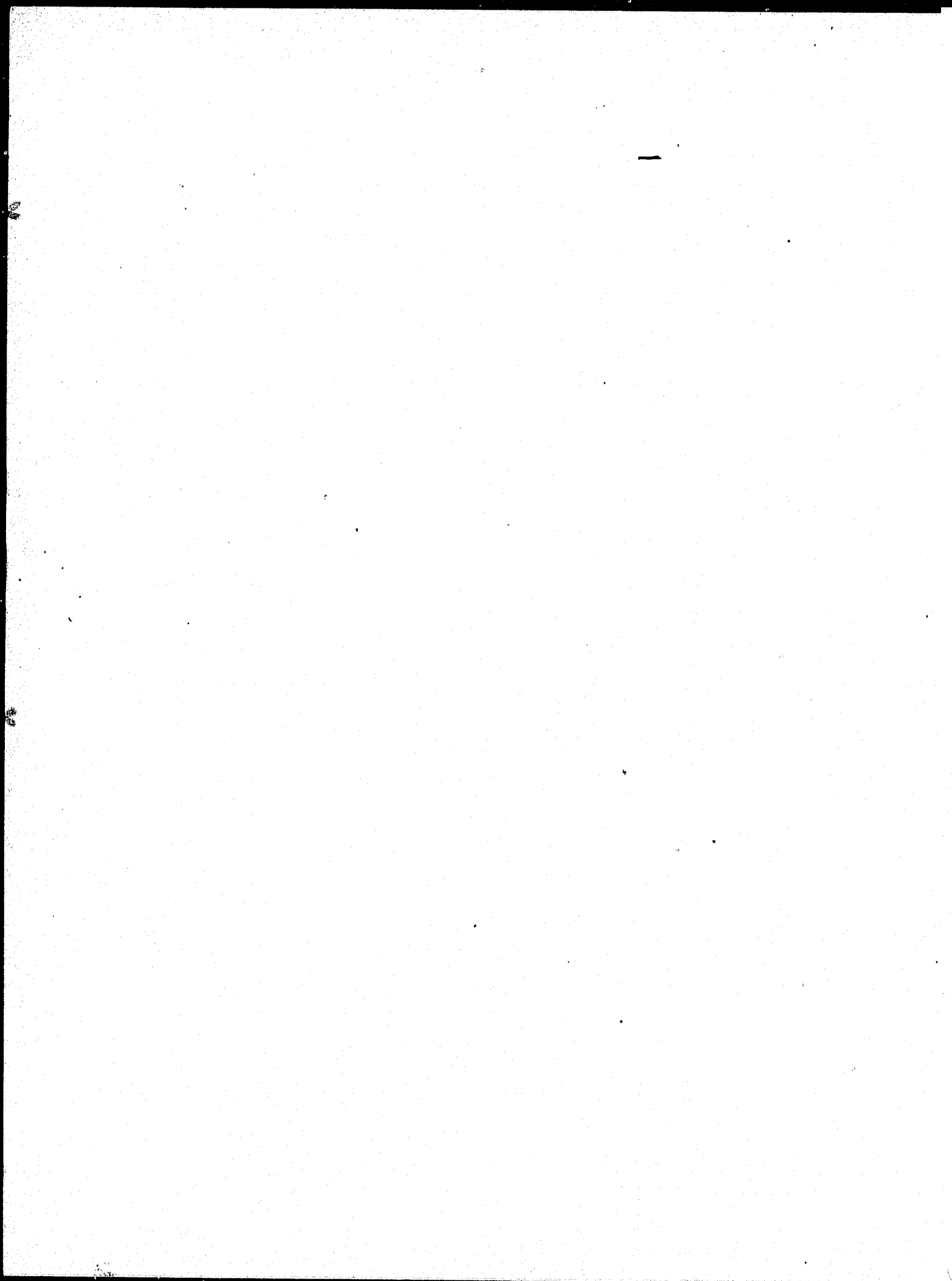
Sworn to before me this
30th day of May, 1973.



Notary Public
NOTARY PUBLIC OF N. J. JRSKY
My Commission Expires Feb. 13, 1978



**Defendant's Statement Pursuant to Rule 9(g) of the
General Rules of the District Court**



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property of
ROOSEVELT CAPITAL CORPORATION,

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.

DEFENDANT'S
STATEMENT PURSUANT
TO RULE 9(g) OF
THE GENERAL RULES
OF THIS COURT

67 Civ. 439

A. The following are material facts as to which defendant Franklin National Bank ("Franklin") contends that there exists a genuine issue to be tried:

1. The total amount of assets Roosevelt Capital Corp. ("RCC") had prior to, during, and after May 14, 1964.
2. The total amount of liabilities RCC had prior to, during, and after May 14, 1964.
3. The capital structure of RCC prior to, during, and after May 14, 1964.
4. The total amount of capital RCC had prior to, during, and after May 14, 1964.
5. The nature of the transaction whereby two official checks totalling \$160,000 were made payable to Sidney Tolmage and debited to the account of RCC.
6. The nature of each transaction involving a check drawn on the RCC account at Hanover Square on May 14, 1964 and thereafter.

B. The following are allegedly material facts set forth in plaintiffs' Rule 9(g) statement which are controverted by defendant Franklin:

1. There is a genuine issue as to the amount of the shareholders' equity in RCC on May 14, 1964 (contra fact #3).

2. There is a genuine issue as to the total amount of RCC's assets on May 14, 1964 (contra fact #3).

3. There is a genuine issue as to whether Mastronardo or Franklin had an "agreement" or "understanding" with the persons present at the meeting (contra fact #7).

4. There is a genuine issue as to whether RCC directed Franklin to issue the two bank checks against its account (contra fact #10).

5. There is a genuine issue as to whether the purchasers paid for the RCC shares with RCC corporate funds (contra fact #13(a)).

6. There is a genuine issue as to whether RCC's corporate assets were reduced; the amount, if any, of such reduction; the amount of RCC's outstanding liabilities (contra fact #13(b)).

7. There is a genuine issue as to whether the purported reduction of RCC's assets was to an amount less than RCC's outstanding liabilities and, if so, the amount of the reduction below the liabilities (contra fact # 13(b)).

8. There is a genuine issue as to whether any shares were delivered to Franklin (as opposed to Mastronardo personally) and whether there was an undertaking

to deliver additional shares to Franklin (contra facts ##14 and 22).

9. There is a genuine issue as to the net amount, if any, transferred by RCC to United Film World and as to nature and terms of the transactions between RCC and United Film World (contra fact #16(c)).

10. There is a genuine issue as to the nature and terms of the transactions between RCC and Trans-World Theatricals (contra fact #17).

11. There is a genuine issue as to the nature and terms of the transactions between RCC and Contractors Guild, Inc. (contra fact #17).

12. There is a genuine issue as to whether the withdrawal of the balance remaining in RCC's account by certified check payable to RCC occurred in connection with the closing of the account (contra facts ##24(a) and 24(b) and implication that withdrawal was not in connection with account closing).

13. There is a genuine issue as to whether Pearson and associates wrongfully dissipated RCC's assets (contra fact #24(c)).

C. The following are material facts as to which Franklin contends there is no genuine issue to be tried:

1. Franklin did not know on May 14, 1964 the amount of the assets of RCC at that time other than the amount on deposit with Franklin or in Treasury Bills bought by Franklin for the account of RCC.

2. Franklin did not know on May 14, 1964 whether RCC had any liabilities at that time.

3. Franklin did not know on May 14, 1964 the amount of liabilities, if any, of RCC at that time.

4. Franklin did not know on May 14, 1964 the capital structure of RCC at that time.

5. Franklin did not know on May 14, 1964 the capital of RCC at that time.

6. Franklin did not know on May 14, 1964 the nature and terms of each of the transactions involving the withdrawal of funds from the RCC account on that date.

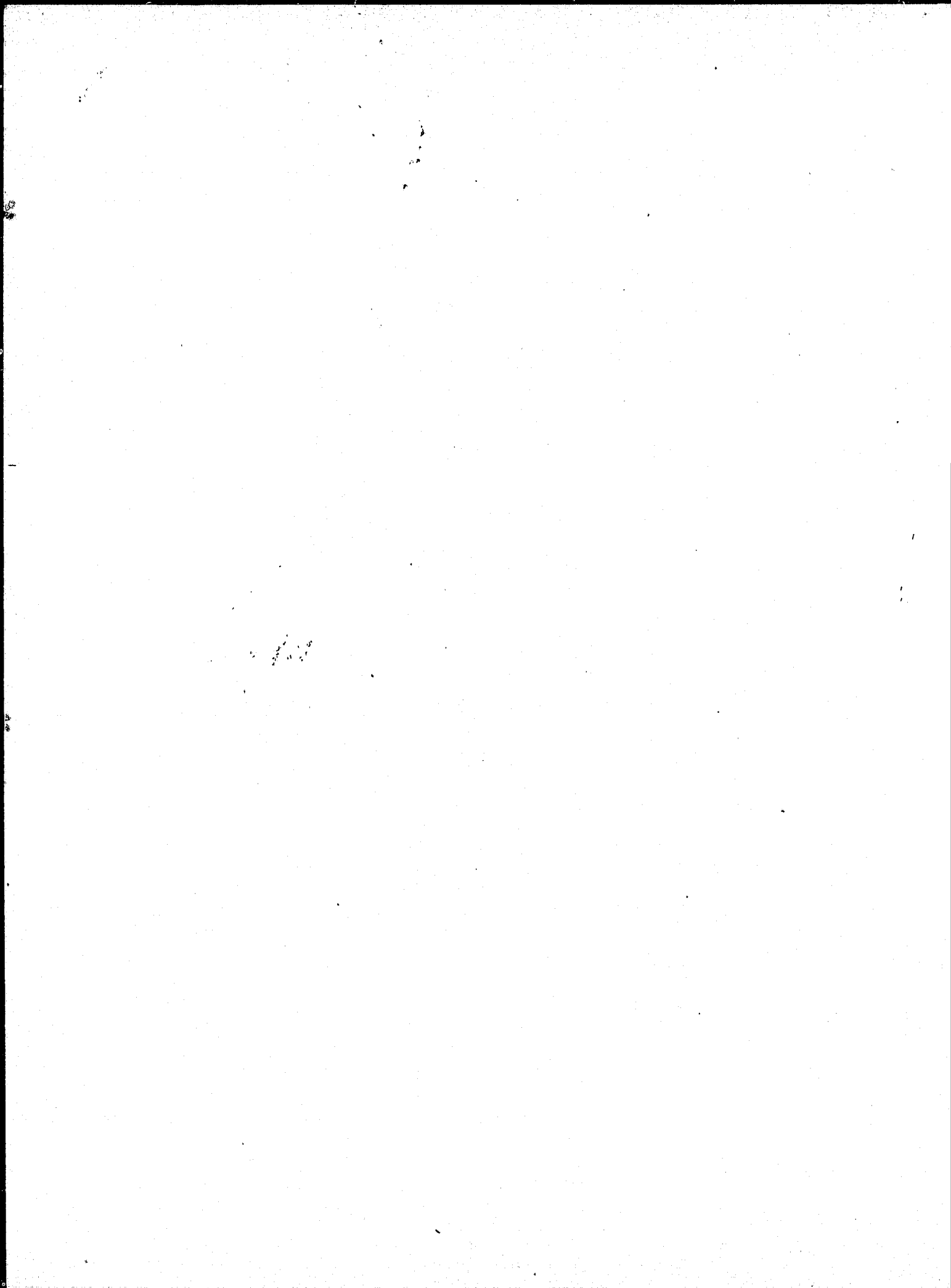
May 30, 1973

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By

Julius Gorman
Member of the Firm
Attorneys for Defendant
Office & P. O. Address
425 Park Avenue
New York, New York 10022
PL 9-8400

**Memorandum Decision and Order (Moore, Senior
U. S. Circuit Judge, Sitting by Designation),
Filed on November 28, 1973**



LEGAL FILE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
★ NOV 28 1973 ★

TIME A.M.
P.M.

UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver
of the funds, assets and pro-
perty of Roosevelt Capital
Corporation,

67-C-439

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.

Appearances:

Henry A. Bracht, Assistant United States Attorney,
Brooklyn, N. Y. (Hon. Robert A. Morse, United
States Attorney for the Eastern District of
New York, Brooklyn, N. Y.), for plaintiff
United States of America.

Mortimer Todel, plaintiff pro se.

Julius Berman, New York, N. Y. (Kaye, Scholer, Fierman,
Hays & Handler, New York, N. Y.), for defendant.

* * *

Before: Hon. Leonard P. Moore,
Senior United States Circuit Judge,
(sitting by designation).

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-1-

MOORE, Circuit Judge (sitting by designation):

This is an action brought by the United States (28 U.S.C. §1345) and by Mortimer Todel, as Receiver of the funds, assets, and property of the Roosevelt Capital Corporation ("RCC") (28 U.S.C. §1331), against Franklin National Bank ("Franklin") to recover funds deposited by RCC with Franklin. A motion for summary judgment has been made by plaintiffs and opposed by Franklin.

I. FACTUAL BACKGROUND^{1/}

Although Franklin maintains that there are issues of fact to be determined at trial, the following facts are not disputed.

RCC was a "small business investment company" (15 U.S.C. §681 et seq.) which, early in 1962, borrowed \$150,000 from the United States through the United States Small Business Administration. These funds became payable to the United States in 1964 after RCC had breached certain conditions of the loan. (See 15 U.S.C. §687(d)). The United States sued RCC and one Raymond Pierson ("Pierson"), the then vice-president of RCC, on this debt and a default judgment was entered on August 3, 1966, in the amount of \$157,229.17 plus interest from February 8, 1964.^{2/}

Early in 1962 RCC had established a corporate checking account at Franklin's Roosevelt Field office in Garden City, New York. In addition, on at least one occasion Franklin also arranged, at the request of RCC, for the investment of some RCC funds in short-term United States Treasury bills (\$187,000). RCC had never sought a loan from Franklin and thus Franklin's knowledge of RCC's

-2-

assets and liabilities was limited to information available from the corporate checking account and knowledge of the purchase of the treasury bills.

On April 28, 1964, the shareholders of RCC through Sidney Tolmage ("Tolmage"), an attorney and RCC shareholder, agreed to sell all of the 15,500 shares of RCC stock outstanding to S. Lonnie Olanow ("Olanow") and Pierson. It was this sale which gave rise to the events which brought about this suit.

Events which occurred on and after May 14, 1964, the date of consummation of the sale of the RCC stock, are central to this action. As to some of these events Franklin asserts that there are genuine issues of material fact which can be resolved only upon a trial. The facts material to a decision herein, however, are not seriously disputed by Franklin. Indeed, they are taken in large part from Franklin's description of these events.

In May, 1964, Franklin was preparing to open a new branch office on Pearl Street in lower Manhattan (the "Hanover Square" branch). On the evening of May 13, 1964, at a reception held at Franklin's Hanover Square branch, Olanow was introduced to Patrick J. Mastronardo ("Mastronardo"), then an assistant cashier at Franklin assigned to the Hanover Square branch, by William Wallace ("Wallace"), the Franklin vice-president in charge of Franklin's Roosevelt Field branch. Mastronardo had never met nor heard of Olanow before. Olanow told Mastronardo that he (Olanow) was to purchase all the stock of RCC the following morning and asked if a room at the Hanover Square branch could be made available for the closing of this purchase. Although the Hanover Square branch was not scheduled to open to the public until May 18, Mastronardo agreed to permit Olanow to use a conference room there for the closing.

-3-

On the morning of May 14, 1964, Olanow appeared at the branch accompanied by the following persons: Pierson, Olanow's associate in the purchase of RCC; Samuel Stone ("Stone"), attorney for the purchasers, and Tolmage, attorney for the sellers. After the closing had been proceeding for some time, Mastronardo was approached by either Olanow or Pierson regarding a problem that he (collectively, the purchasers) claimed had arisen. Mastronardo describes this event as follows:

I was told that the purchasers were supposed to make the payment for the corporate stock by way of certified checks, but that, unfortunately, they were from out of town and could not get checks certified at this time. I was also informed that RCC had available to it \$187,000 in cash representing the proceeds of matured Treasury bills. I was requested to accommodate both the purchasing and selling groups by issuing two official checks totalling \$160,000 against the funds contained in the RCC account at the Bank.

Mastronardo affidavit, May 30, 1973, ¶8
(emphasis in original).

Thus at this point Mastronardo knew that the purchasers did not have the sums required to consummate the sale and that RCC had cash of \$187,000. According to his own statement Mastronardo then telephoned the Roosevelt Field branch and confirmed that RCC funds in the amount of \$160,000 were available. Mastronardo was then given a letter from Tolmage to Stone which read as follows:

-4-

I am confirming to you that I have today instructed Mr. William Wallace, Jr., Vice President of the Franklin National Bank at Garden City, N. Y. to release to the Roosevelt Capital Corporation \$187,000, the proceeds of Treasury bills which were on deposit with the Garden City Branch of the Franklin National Bank to the credit of The Roosevelt Capital Corporation.

Mastronardo states that he "also ascertained that Tolmage had authority to issue this [letter]." Mastronardo Affidavit, May 30, 1973, ¶9. No evidence of this authority from RCC was presented.

A new RCC account was then opened at the Hanover Square branch; and, according to Mastronardo, "corporate resolutions and signature cards were delivered authorizing its officers, including Messrs. Pierson and Stone, to issue instructions with respect to the RCC funds; and a specific letter of instruction signed as indicated below was delivered to the Bank directing it to issue the checks. This letter reads as follows:

Gentlemen:

Please issue your official checks to order of Sidney Tolmage in the amounts of \$42,000 and [\$118,000^{3/4}] for delivery to him.

Very truly yours,

/S/ Ray Pierson

Roosevelt Capital Corporation

Mastronardo Affidavit, May 30, 1973, ¶10.

-5-

Official Franklin checks for \$42,000 and \$118,000 were prepared and delivered to either Pierson or Olanow. These checks were official bank checks. They were not drawn by RCC against funds in its account nor were RCC's checks delivered to Franklin for certification. After both checks had been delivered by the purchasers to Tolmage, representing the selling shareholders, Tolmage endorsed the \$118,000 check over to RCC as payment for assets of RCC (other than the \$187,000) which the purchasers did not wish to hold. This check was then deposited in the new RCC account at Hanover Square.

By debit memorandum drawn against RCC's funds, Franklin then reimbursed itself for the "official" checks which it had issued and delivered at Pierson's request.

On May 14, after the closing, Olanow, through Mastronardo, established two new corporate checking accounts at Franklin's Hanover Square branch in the names of Trans-World Theatricals, Inc. and of United Film World. A check for \$60,000 was then drawn on the RCC Hanover Square account,^{4/} and deposited in the Trans-World Theatricals account. Subsequently a second check for \$60,000 was drawn on this RCC account and paid to the United Film World account. A check for \$42,000 was then drawn on the United Film World account payable to Pierson. This check was then deposited in the RCC account, resulting in a net transfer from RCC to United Film World of \$18,000. On Friday, May 15, 1964, Olanow opened an account through Mastronardo in the name of Contractors Guild, Inc. with a \$44,000 check drawn on the Trans-World Theatricals account (to which a \$60,000 RCC check had been deposited the previous day).

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In accordance with Franklin's practice at that time, on or about May 20, 1964, Mastronardo initiated a routine credit check on Olanow after he had opened the above-described accounts. The results of this inquiry were highly unfavorable and Mastronardo immediately notified Olanow to make other banking arrangements. On May 26, 1964, Mastronardo approved certification of a check to Pierson in the amount of \$67,000, the balance remaining in the RCC Hanover Square account. These funds, as well as those in the other corporate accounts to which RCC money was transferred, have apparently been dissipated and are no longer available to satisfy the judgment of the United States against RCC.

II. MOTION FOR SUMMARY JUDGMENT

In the affidavit accompanying its motion for summary judgment the United States claims that \$305,000 in cash assets which RCC had deposited with Franklin were dissipated in three steps:

- (a) FRANKLIN NATIONAL BANK accepted \$160,000 of RCC corporate assets to satisfy the indebtedness of Pierson and the purchasers for whom the bank had issued the cashier's [also referred to as "official"] checks, knowing that the purchasers were not and could not have been RCC officers and that, in any event, the funds had been applied for purely personal purposes;
- (b) FRANKLIN NATIONAL BANK knowingly facilitated the purchasers' fraudulent transfer of \$78,000 to other accounts controlled by them in a series of bizarre exchanges; and
- (c) FRANKLIN NATIONAL BANK turned over the remaining \$67,000 of RCC assets to the looters of RCC expressly because of their chicanery.

As an unsatisfied judgment creditor of the allegedly "demuded" RCC, the United States seeks to recover so much of the indebtedness of Franklin to RCC as will satisfy its judgment against RCC.

Franklin opposes plaintiffs' motion for summary judgment because it believes (1) that there are genuine issues of material fact which can be resolved only at a trial, and (2) that the United States may not bring this action since a court-appointed receiver of the funds, assets, and property of RCC has been named to represent its interests. Franklin also asserts that claims (b) and (c) made by the United States in this motion for summary judgment (see supra) are not properly before the court.

The asserted issues of fact are dealt with in Section III of this opinion.

As to Franklin's claim that the United States may not maintain this action since Mortimer Todel has been appointed a receiver to protect its interests, the United States cites three cases in support of its position: United States v. Crosby, 66 Civ. 2026 (S.D.N.Y. Feb. 23, 1967) (a case related to this one); United States v. Summerlin, 310 U.S. 414 (1940) (Federal Housing Administrator as assignee); United States v. Anasae Int'l Corp., 197 F. Supp. 926 (S.D.N.Y. 1961) (holding Commodity Credit Corporation not an indispensable party).

Franklin argues that none of these cases is authority for the United States to bring this action since none involved the right of the United States to bring suit where a receiver has been appointed and has brought suit on the very same claim. The propriety of such a suit by the United States need not be resolved at this time. Since the receiver is a party to this suit and to

this motion for summary judgment, and since his power to bring this action has not been challenged, I do not find it necessary to determine whether the United States could bring such a suit on its own. Resolution of this question should await a case in which that issue is squarely raised so that all of the consequences of the decision may be fully considered.

Franklin has further argued that the claims of the United States that Franklin "knowingly facilitated the purchasers' fraudulent transfer of \$78,000 [the net transfer from the RCC account to Trans-World Theatricals and to United Film World] ***" and that it "turned over the remaining \$67,000 of RCC assets [the funds paid to Pierson to close the RCC account] to the looters of RCC expressly because of their chicanery" (Plaintiffs' Motion for Summary Judgment) are not properly before the court. It is true that no explicit reference to these transfers is contained in the complaint. Furthermore, the one paragraph of the complaint which alleged "a scheme to fraudulently and unlawfully disburse and waste the assets of said corporation" (complaint, ¶8), and which arguably could be said to include these other transfers, was ordered stricken from the complaint prior to answer. (See, Order of Judge Weinstein, Nov. 29, 1967).

I believe, however, that on this motion for summary judgment I may properly treat the question of the subsequent transfers of funds from the RCC account at Hanover Square as having been raised by implied consent under Rule 15(b) of the Federal Rules of Civil Procedure. The papers before the Court do present the question of how Franklin allowed Olanow and Pierson to transfer RCC funds to the unrelated accounts of Trans-World Theatricals, Inc. and United Film World as well as the final transfer of funds

from the RCC account to Pierson after he had been requested to close the account. Copies of notes which Mastronardo kept so that he could keep track of the rapid shuffling of funds in and out of these accounts are before the Court, as are the bank documents and the ledger cards for each account. In addition, Franklin has admitted the genuineness of all of these documents. Under these circumstances I deem the complaint amended to conform to the proof. Fletcher v. Nostadt, 205 F.2d 896, 897 (4th Cir. 1953); Rossiter v. Vogel, 134 F.2d 908, 912 (2d Cir. 1943); Bucky v. Sebo, 208 F.2d 304, 305 (2d Cir. 1953); Bradford Audio Corp. v. Pious, 392 F.2d 67 (2d Cir. 1968).

III. FRANKLIN'S OFFICIAL CHECKS FOR \$160,000

In opposing plaintiffs' motion for summary judgment Franklin asserts that there are a number of issues which can be resolved only after a full trial. As to most of these asserted issues, Franklin has ignored the requirement of Rule 56(e), F.R. Civ. P., that the claim that there are genuine issues of fact for trial must be supported by affidavits or otherwise, and must not consist solely of mere allegations. This, however, has not been the ground for my conclusion that summary judgment is proper here. Rather, careful scrutiny of each of the asserted "issues" of fact has led me to conclude that most of the issues are immaterial and that, even if Franklin's version of the asserted issues of material fact is taken as true, Franklin cannot prevail in this action.

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As related supra, Franklin contends that RCC authorized it, through the letter of instruction from Pierson, to issue official checks of \$42,000 and \$118,000, which checks were to be paid out of the proceeds of the matured Treasury bills held at Roosevelt Field. The United States and the receiver, on the other hand, claim that what Franklin did here, in effect, was to lend Pierson \$160,000, and then, when it became clear that he was not going to provide a properly certified check to reimburse Franklin, the bank simply charged the RCC account for the amount of the checks. In support of this position plaintiffs note that Mastronardo held the shares of RCC which Tolmage sold to Pierson and Olanow and was given a letter from Tolmage to the effect that since he had delivered only 14,333.3 shares to Franklin, he would produce the remaining 1,166.7 shares within thirty days or pay Franklin \$10 for each share not delivered. While this is some evidence that Mastronardo held the shares as collateral to insure that Pierson and Olanow did pay the bank the \$160,000 it had advanced to permit the parties to complete the sale of RCC on schedule, this is controverted by Franklin and thus is not considered on this motion for summary judgment. I accept Franklin's statement that Mastronardo was simply holding the shares as an accommodation. Even accepting Franklin's version of the circumstances under which it issued the checks for \$160,000, however, I am compelled to conclude that Franklin improperly received RCC corporate funds in reimbursement for its official checks.

Since Franklin asserts that its action in issuing its official checks was authorized by RCC, a careful examination of that authorization is in order. The letter (set forth again)

relied upon by Franklin was addressed to it and reads in full as follows:

Gentlemen:

Please issue your official checks to order of Sidney Tolmage in the amounts of \$42,000 and \$118,000 for delivery to him.

Very truly yours,

/s/ Ray Pierson

Roosevelt Capital Corporation

These checks, of course, were issued to Tolmage to enable Pierson and Olanow to purchase RCC. This letter was not an order to Franklin to issue checks and charge them against RCC's account. The very fact that the letter is signed by one who was not then an officer of RCC required some explanation. Franklin's answer to this is that, in addition to this letter, it had received a proper corporate resolution form and signature cards and that the sale of RCC involved a number of separate steps which actually took place "simultaneously." Franklin analogizes this transaction to a simple real estate closing where money is advanced by the buyer's bank to enable the seller to pay off his own mortgage so that he may deliver an unencumbered deed to the purchaser, who in turn delivers a mortgage to his bank. While the foregoing is a fine example of a simultaneous transaction, it is not analogous to what should have happened when Tolmage, representing the selling shareholders, sold their RCC stock to Pierson and Olanow. The corporate resolution, which purported to authorize Pierson, as vice-

-12-

president of RCC, to pay out RCC funds as he saw fit, was delivered to Mastronardo on May 14 before the sale of the RCC stock was completed. At that time Mastronardo certainly knew that Pierson and the others who signed the resolution (allegedly as president and secretary) were not then officers of RCC. (Resolution included in Appendix to Motion for Summary Judgment at 28.) Similarly, when he received the letter described above by which Pierson purported to "authorize" Franklin to pay out \$160,000 of RCC funds, Mastronardo in fact knew that Pierson was not then in a position to issue such instructions regarding RCC funds.

Franklin argues that it had no idea of the actual nature of the transaction in question.

For all [Mastronardo] knew, the transaction might have been a loan by the corporation to the purchasers, a dividend by the corporation to its stockholders, a reduction of capital, a payment for the purchase or redemption of stock, a gift, or any other perfectly ordinary transaction.

(Franklin's memorandum in opposition to Plaintiffs' Motion for Summary Judgment at 17.)

There is little purpose to be served by speculating as to "might-have-beens" when it is clear that Mastronardo had the ^{actual} facts

before him,

Whatever Mastronardo

thought about the reasons why he was being asked to issue Franklin's official checks, he well knew (1) that Pierson and Olanow were purchasing the stock held by stockholders represented by Tolmage; (2) that Pierson and Olanow themselves had no acceptable funds to purchase the stock; and (3) that when Pierson delivered the letter

-13-

purporting to authorize Franklin to pay out \$160,000 of RCC funds, he had no proper authority to do so. Under these circumstances I believe it is crystal clear that Franklin improperly reimbursed itself for its issuance of official checks from RCC corporate funds without proper authority.

Franklin's discussion of the law with respect to the obligations of a bank to its depositors^{5/} and the consequences to a bank of wrongful dishonor of an authorized instruction from a depositor^{6/} is correct in every detail and is not contested by plaintiffs. Franklin is mistaken, however, in asserting that this law mandates a dismissal of the complaint in this case. The litany of cases recited by both plaintiffs and defendant here deals generally with checks drawn on trust or corporate accounts for the personal use of the drawer. The decisions in these cases turn on whether the particular facts in each case warrant a finding that the bank had sufficient knowledge of the activities of the party misappropriating funds so that it could be held responsible for the losses that occurred. One such case is Grace v. Corn Exchange Bank & Trust Co., 287 N.Y. 94 (1941), where the Court, per Chief Judge Lehman, said:

[W]here a bank accepts payment of any indebtedness with knowledge that the debtor is wrongfully using moneys which do not belong to him, the bank becomes a participant in the debtor's wrongful act ***.
287 N.Y. at 105.

In Aetna Cas. & Surety Co. v. Catskill Nat'l Bank & Trust Co., 102 F.2d 527 (2d Cir. 1939), the Court discussed a bank's "right to assume that in withdrawing money from his account the [trustee] will deal lawfully with the trust funds. The bank is obliged by contract and business necessity to honor checks promptly, and has

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neither the time nor the facilities to act as detective on the conduct of depositors." 102 F.2d at 529. The Court concluded, however, that

[t]he situation is different where a bank has actual knowledge that trust funds in the account are being misused or dissipated in a transaction. There the bank is liable for funds misappropriated,***. Id. (emphasis added.)

As a third instance, in Ward v. City Trust Co. of N.Y., 192 N.Y. 61 (1908), a duty of inquiry into a transaction was found where "the check was for so large an amount as to induce a prudent man to proceed with caution." 192 N.Y. at 70. In that case the amount of the check was "\$125,000, or precisely one-half of [the corporation's] capital as it stood at that time." 192 N.Y. at 73.

In the instant case there is no dispute that Mastronardo, an officer of Franklin, knew that the RCC shareholders were selling all their interest in the corporation for \$160,000. He confirmed by telephone that the amount of cash in RCC's account was just over \$187,000. Under these circumstances there is no doubt that when it honored Pierson's letter, issued checks for \$160,000, and later charged them to RCC's account, Franklin had actual knowledge that it was applying corporate funds to cover the personal debt of Pierson and his associates and that it was doing so without proper authorization from RCC. (See Grace v. Corn Exchange Bank, supra; Aetna Cas. & Surety Co. v. Catskill Nat'l Bank & Trust Co., supra.) Then too, Mastronardo knew that the \$160,000 was the purchase price for all of the stock of RCC and that this sum was equal to some 85% of all the funds RCC had on deposit with Franklin. (See Ward v. City Trust Co., of N.Y., supra.)

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It is not necessary to the decision here that it be shown that when Franklin issued its official checks it had knowledge of RCC's assets and liabilities. Similarly it is unnecessary to show that Franklin knew whether the funds it advanced pursuant to Pierson's letter were the proceeds of a loan, a corporate dividend, a reduction in capital, a gift, or any other similar transaction. It is clear that Pierson's letter could not authorize any disbursement of RCC funds until after he had become an officer of the corporation; and he did not achieve that status until after the checks had been issued.

Franklin relies heavily on Field v. Bankers Trust Co., 296 F.2d 109 (2d Cir. 1961). There Chief Judge Lumbard upheld a finding in the district court that defendant banks were not liable for permitting a corporate officer to write checks which impaired a bankrupt corporation's capital. This holding rested on the specific findings that defendants had no knowledge of any improprieties with respect to any of the challenged transactions. 296 F.2d at 112-13. This case presents no such situation. Under Franklin's own version of the facts, it had actual knowledge which may be termed, at the very least, embarrassingly complete. Thus, I believe that the papers before me clearly establish that Franklin paid out \$160,000 of RCC funds pursuant to a purported corporate resolution which it knew was invalid. Under these circumstances, these funds must be returned to the corporation.

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IV. THE REMAINING TRANSACTIONS

Mastronardo has described the bewildering shuffling of funds among the corporate accounts established at Franklin's Hanover Square branch as "unusual". (Deposition of Franklin Nat'l Bank by Patrick J. Mastronardo, Nov. 26, 1965, United States v. Roosevelt Capital Corp., S.D.N.Y., 65 Civ. 162, at 22.) At that time Mastronardo requested that Pierson explain these transactions and was told something which satisfied him at the time. Id. The law on this point is well-established.

If a person has knowledge of such facts as would lead a fair and prudent man, using ordinary thoughtfulness and care, to make further accessible inquiries, and he avoids the inquiry, he is chargeable with the knowledge which by ordinary diligence he would have acquired. Fidelity & Deposit Co. of Md. v. Queens County Trust Co., 226 N.Y. 225, 233 (1919).

Mastronardo was given the opportunity to observe firsthand the subsequent looting of the RCC treasury by Pierson and his associates. Not only were the checks drawn on the RCC account on May 14 and 15 "for so large an amount as to induce a prudent man to proceed with caution" (Ward v. City Trust Co. of N.Y., supra, 192 N.Y. at 70), but they also totalled \$280,000, or \$120,000 more than the price which was supposed to have been paid for RCC (Ward v. City Trust Co. of N.Y., supra, at 74) and with which Mastronardo was intimately familiar. These transactions were so extraordinary that they aroused concern even in Mastronardo, although he permitted Pierson to explain them away with a now unremembered story. (Maley v. East Side Bank of Chicago, 361 F.2d 393, 399 (7th Cir. 1966)).

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Franklin paid out \$78,000 of RCC funds to the corporate accounts, which Olanow set up, with full knowledge of how Pierson and his associates had managed to get access to these funds and despite the fact that Mastronardo deemed the payments "unusual". He merely sought some explanation of them from the looters as they went about their looting. After the obvious had been confirmed for him by a credit check, Mastronardo told Olanow and his associates to take their banking business elsewhere. The final incredible act in this sordid affair then occurred. Pierson asked that Franklin certify a check for the \$67,000 remaining in RCC's account (so that the rape of the corporate assets could be consummated) and Mastronardo supinely agreed.

Franklin's vigorous denials of all knowledge of the nature of the transactions which gave rise to this action are totally incredible and fly in the face of Mastronardo's own statements.

Here we have no routinely processed checks which slipped by low-level employees in the flood of Franklin's daily check clearing operations. Rather, we have an officer of Franklin who personally observed (and took notes on) these transactions. Under such circumstances there need be no consideration here of the problems faced by banks which must process thousands of checks daily and which must, in general, not be held to any strict duty to investigate the circumstances surrounding the issuance of individual checks. Ward v. City Trust Co. of N.Y., supra, 192 N.Y. at 72; Bischoff v. Yorkville Bank, 218 N.Y. 106, 113 (1916); Aetna Cas. & Surety Co. v. Catskill Nat'l Bank & Trust Co., supra, 102 F.2d at 529. Franklin's liability to RCC for the \$78,000 paid

-18-

out to Olanow's other corporations and for the \$67,000 remaining in the RCC account is clearly established.

V. CONCLUSION

To dismiss Franklin's "simultaneous transaction" argument is not, I think, to take a "super-technical approach." (Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment at 33.) Nor do I believe that to hold Franklin liable for the corporate funds which it improperly transferred from RCC's account is to engage in "technical conceptualism" (*Id.* at 34) or to treat unjustly a "Good Samaritan" who simply acted generously in offering the use of a meeting room to a customer. (*Id.* at 36.)

Franklin has been the victim of two unscrupulous financial operators who, representing themselves to have been without any then available funds to consummate their stock purchase, saw an opportunity to purchase the RCC stock with RCC's own assets. Franklin, however, provided the means whereby RCC was thus looted. The philosophy and legal consequences of Superintendent of Insurance of New York v. Bankers Life & Casualty Co., et al., 404 U.S. 6 (1971) are equally applicable here.

Adopting Franklin's version of the facts, I am nevertheless compelled to conclude that this is a classic case of "actual knowledge," and one which is far stronger than the cases cited by plaintiffs.


Summary judgment for plaintiffs is granted.

Franklin will pay the amount by which RCC is indebted to the United States on the judgment entered on August 3, 1966, in Civil Action No. 65 Civ. 162 in the Southern District of New York. This amount will include the principal amount of that judgment, \$157,229.17, plus interest to date, so long as the total amount of this award does not exceed the total of the sums for which Franklin has been found liable here (i.e., \$160,000 + \$78,000 + \$67,000 = \$305,000), together with interest and costs.

It is so ordered.

Brooklyn, N. Y.

Dated: November 28, 1973


(Hon. Leonard P. Moore)
Senior United States
Circuit Judge,
sitting by designation

FOOTNOTES1/

The story of related aspects of this transaction is to be found in the indictment and trial (United States v. Crosby, et al., S.D.N.Y. 69 Cr. 404; U.S.C.A. 2d Cir. Docket No. 71-1516). On February 9, 1971, Pierson pleaded guilty to Count 2 of the indictment. Co-conspirators Crosby and Calise were convicted, Crosby on Counts 1 to 6, inclusive, Calise on Count 1.

2/

United States v. Roosevelt Capital Corp., S.D.N.Y., 65 Civ. 162, Aug. 3, 1966.

3/

While the Mastronardo Affidavit states that the letter authorized checks of \$42,000 and \$18,000, it is undisputed that the actual letter read "\$42,000 and \$118,000." See Mastronardo Affidavit, May 30, 1973, ¶12; Amended Answer ¶3.

4/

At that time the RCC account at Hanover Square had been credited with the \$187,000 representing the proceeds of the matured Treasury bills and with the \$118,000 official check endorsed to RCC by Tolmage in payment for certain RCC assets. This account was also eventually charged with the official checks totalling \$160,000 which had been used by Olanow to purchase RCC.

5/

Bank of Marin v. England, 385 U.S. 99 (1966); Carson v. Federal Reserve Bank, 254 N.Y. 218 (1930); Whiting v. Hudson Trust Co., 234 N.Y. 394 (1923); Wildenberger v. Ridgewood Nat'l Bank, 230 N.Y. 425 (1921).

6/

N.Y.U.C.C. §4-402; Field v. Bankers Trust Co., 296 F.2d 109
(2d Cir. 1961); Wildenberger v. Ridgewood Nat'l Bank, supra.

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Judgment for Plaintiffs, Filed on November 28, 1973

CLOSED

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FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

★ NOV 28 1973 ★

TIME A.M.

P.M.

UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver
of the funds, assets and pro-
perty of Roosevelt Capital
Corporation,

JUDGMENT

67 C 439

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendants.

A Memorandum of Decision and Order of Honorable Leonard P. Moore, United States Circuit Judge (sitting by designation), having been filed on November 28, 1973, granting plaintiffs' petition for summary judgment, it is

ORDERED and ADJUDGED that summary judgment is granted in favor of the plaintiffs and the defendant Franklin National Bank will pay the amount by which Roosevelt Capital Corporation is indebted to the United States on the judgment entered on August 3, 1966, in Civil Action No. 65 Civ 162 in the Southern District of New York. This amount will include the principal amount of that judgment, \$157,229.17, plus interest to date, so long as the total amount of this award does not exceed the total of the sums

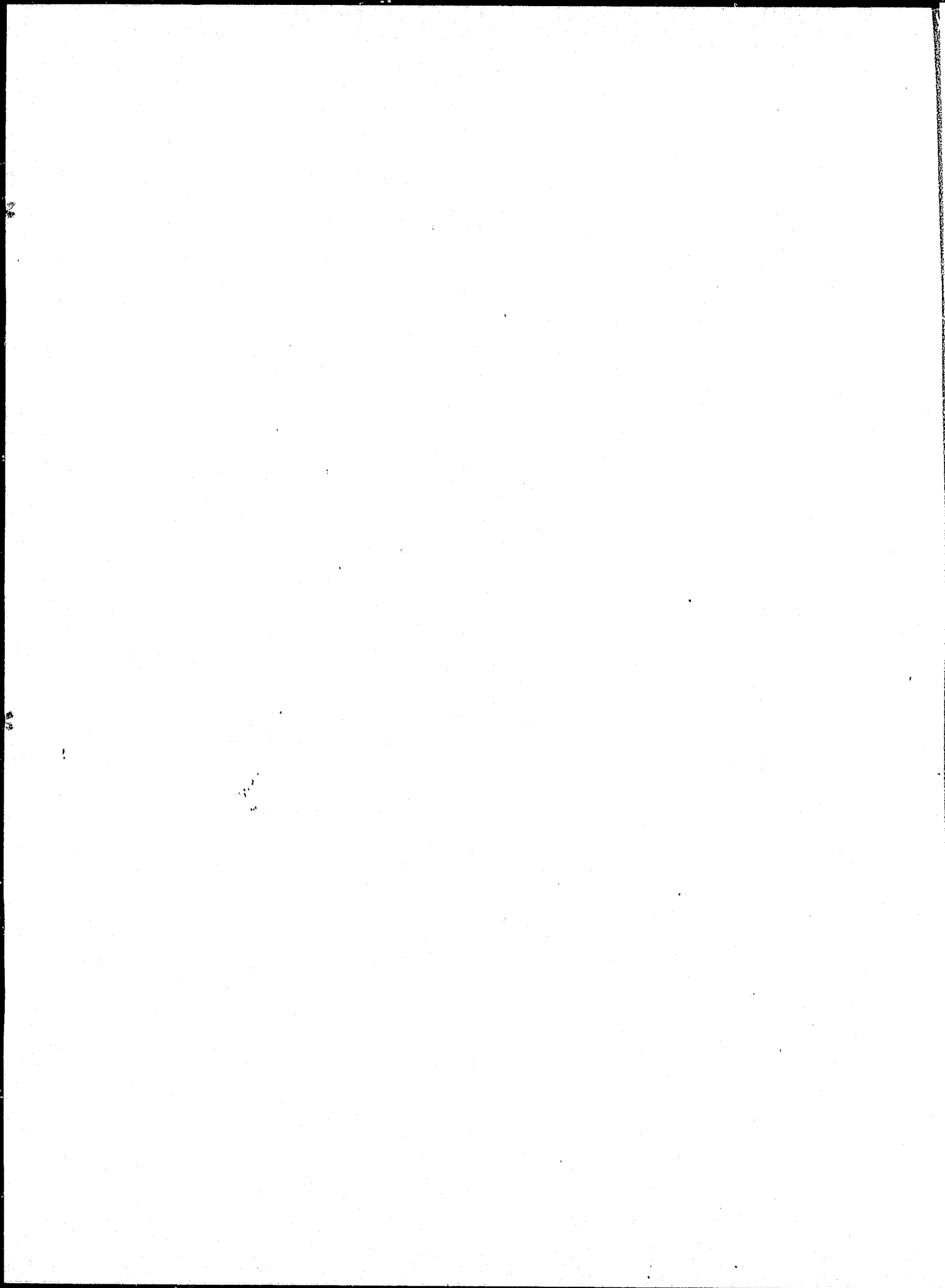
for which Franklin National Bank has been found liable here
(i.e., \$160,000 + \$78,000 + \$67,000 = \$305,000), together with
interest and costs.

Dated: Brooklyn, New York
November 26, 1973

John F. [unclear]
Clerk

559a

**Defendant's Notice of Appeal, Filed on December 7,
1973, from Memorandum Decision and Order and
Judgment of November 28, 1973**



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver of the :
funds, assets and property of :
Roosevelt Capital Corporation, :

67 CIV 439

Plaintiffs, :

NOTICE OF APPEAL

-against-

FRANKLIN NATIONAL BANK,

Defendant. :

FILED
DEC 7 204PM '73
CLERK
U.S. DISTRICT COURT
EASTERN DISTRICT
OF NEW YORK

S I R S :

NOTICE is hereby given that Franklin National Bank, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from a memorandum decision and order of this Court, by the Hon. Leonard P. Moore, Senior United States Circuit Judge (sitting by designation), dated and entered on November 28, 1973, granting plaintiffs summary judgment against said defendant Franklin National Bank in the amount of \$157,229.17, plus interest to date of judgment, so long as the total amount of the judgment does not exceed \$305,000, together with interest and costs, and from the judgment dated and entered on November 28, 1973, pursuant to the aforesaid memorandum decision and order, and defendant Franklin National Bank hereby appeals from each and every part of said memorandum decision and order and judgment and from the whole thereof.

Dated: December 7, 1973
New York, New York

Yours, etc.,

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER

By

Julius A. Fierman
Member of the Firm
Attorneys for Defendant
Office & P.O. Address
425 Park Avenue
New York, New York 10022
PL 9-8400

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TO:

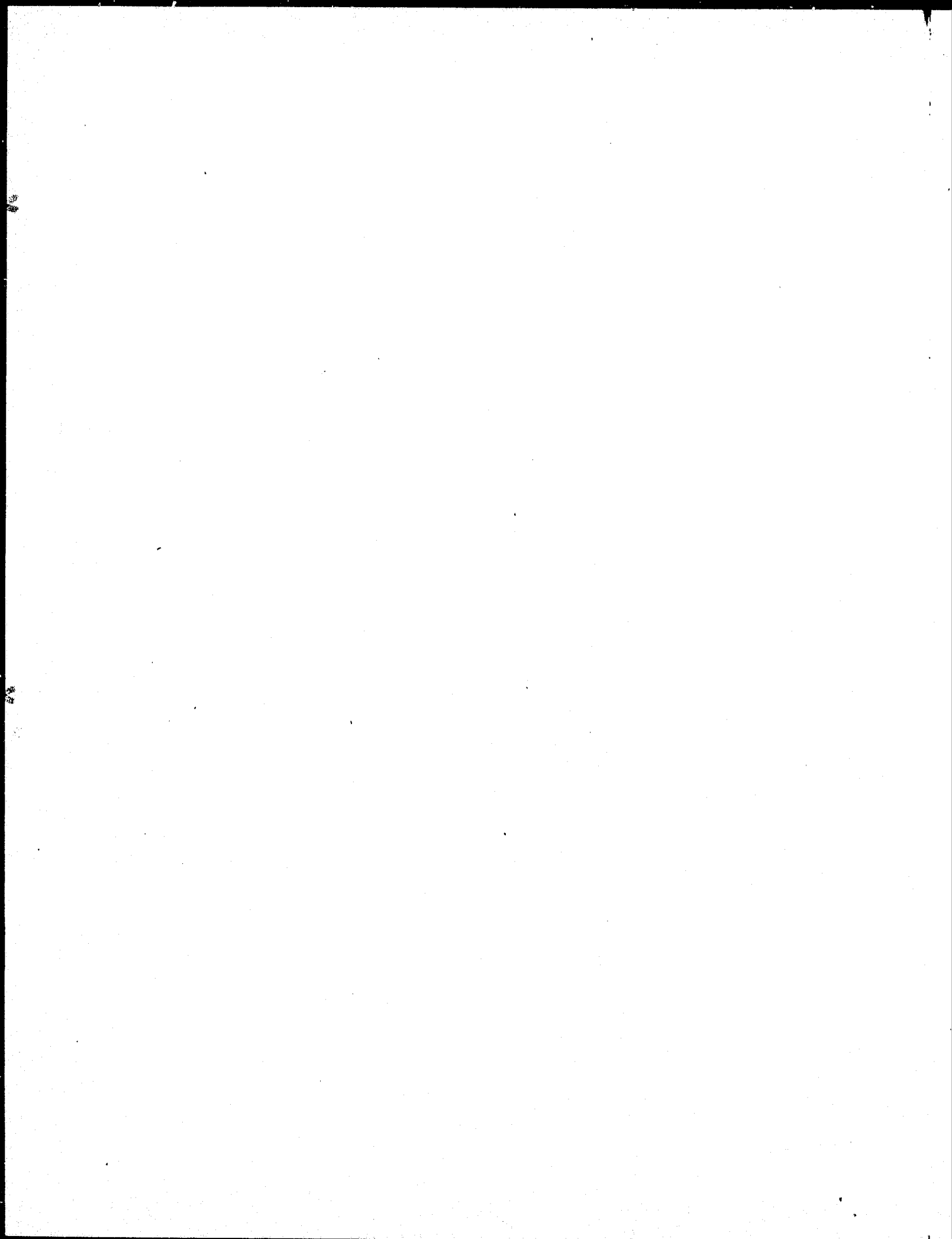
ROBERT A. MORSE
United States Attorney
Eastern District of New York
Attorney for Plaintiff
United States of America
225 Cadman Plaza East
Brooklyn, New York 11201

MORTIMER TODEL, ESQ.
Plaintiff Pro Se
150 East 58th Street
New York, New York 10022

563a

**PLAINTIFFS' PAPERS IN SUPPORT OF MOTION TO
CORRECT JUDGMENT of November 28, 1973,
OR, IN THE ALTERNATIVE, TO ALTER OR
AMEND JUDGMENT, Filed on
December 11, 1973**

**Notice of Motion to Correct or Alter or Amend
Judgment, Dated December 10, 1973**



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver, of the
funds, assets and property of
Roosevelt Capital Corporation,

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.

NOTICE OF MOTION

Civil Action

No. 67 C 439

S I R S :

PLEASE TAKE NOTICE that upon the annexed affidavits of HENRY A. BRACHTL, Assistant United States Attorney, Eastern District of New York, and MORTIMER TODEL, ESQ., Receiver of the funds, assets and property of Roosevelt Capital Corporation, dated December 10, 1973, and upon the proceedings heretofore had herein, plaintiffs will move this Court before the Honorable Leonard P. Moore, Senior United States Circuit Judge (sitting by designation) at the United States Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the 28th day of December, 1973, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order pursuant to Rule 60(a) of the Federal Rules of Civil Procedure correcting the Judgment of this Court entered in this action (a) to recite the amount of interest due on the judgment of the UNITED STATES against ROOSEVELT CAPITAL CORPORATION entered August 3, 1966 (S.D.N.Y. Civil Action No. 65 Civ. 162); (b) include and recite the interest due on the principal amount of \$305,000 for which defendant FRANKLIN NATIONAL BANK has been found liable here from May 26, 1964 to date;

and (c) to recite the obligation of defendant FRANKLIN NATIONAL BANK to pay to plaintiff MORTIMER TODEL, Receiver of ROOSEVELT CAPITAL CORPORATION, the balance of all funds of ROOSEVELT CAPITAL CORPORATION for which defendant has been found liable here upon payment to plaintiffs of the principal amount of the aforementioned judgment of the UNITED STATES against ROOSEVELT CAPITAL CORPORATION with interest to date, on the ground that said recitations were omitted from the Judgment entered herein on November 28, 1973; or, in the alternative, for an order pursuant to Rule 59(e) of the Federal Rules of Civil Procedure altering or amending the Judgment entered herein to include and recite the matters specified above; and for such other and further relief as to the Court may seem just and proper.

Dated: Brooklyn, New York
December 10, 1973

Yours, etc.

EDWARD JOHN BOYD V
Acting United States Attorney
Eastern District of New York
Attorney for Plaintiff
United States of America

By:

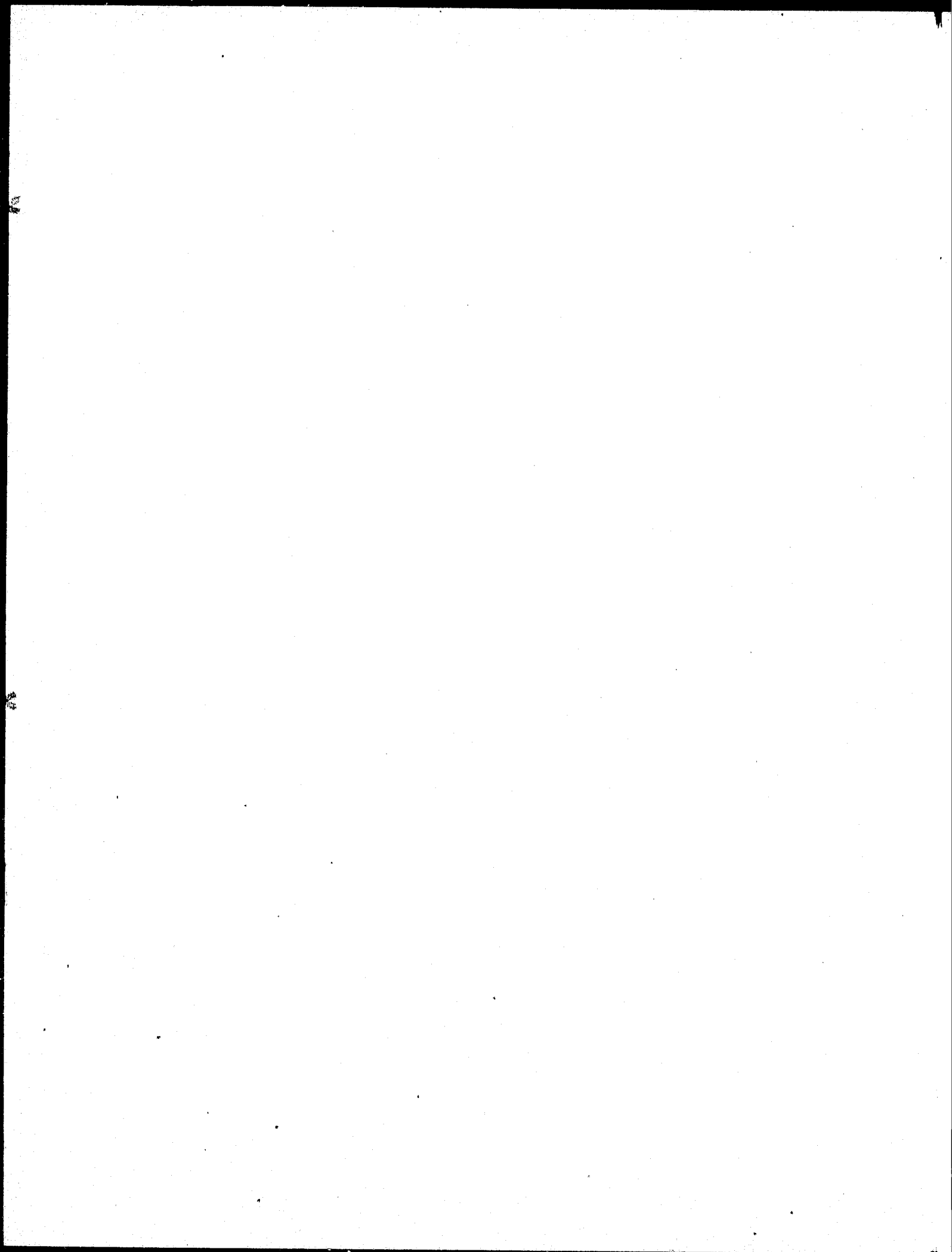
Henry A. Brachtel
HENRY A. BRACHTL
Assistant U. S. Attorney
225 Cadman Plaza East
Brooklyn, New York 11201

Mortimer Todel
MORTIMER TODEL, ESQ.
Receiver of the Funds, Assets
and Property of Roosevelt
Capital Corporation
Plaintiff Pro Se
1 Rockefeller Plaza
New York, New York 10020

TO:
KAYE SCHOLER FIERMAN HAYS
& HANDLER, ESQS.
Attorneys for Defendant
425 Park Avenue
New York, New York 10022

567a

**Affidavit of Henry A. Brachtl, Assistant United States
Attorney, Sworn to December 10, 1973**



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JDP:HAB:sm
F. #670384

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver, of the
funds, assets and property of
Roosevelt Capital Corporation,

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.

AFFIDAVIT

Civil Action

No. 67 C 439

STATE OF NEW YORK)
 : SS.:
COUNTY OF KINGS)

HENRY A. BRACHTL, being duly sworn, deposes and
says that:

(1) I am an Assistant United States Attorney
for the Eastern District of New York, counsel for plaintiff
UNITED STATES OF AMERICA in the above action. I make this
affidavit in support of the motion of plaintiffs for an
order correcting the Judgment entered herein to remedy
certain omissions pursuant to Rule 60(a) of the Federal
Rules of Civil Procedure or, in the alternative, to alter
or amend the Judgment pursuant to Rule 59(e), F.R.Civ.P.

(2) On November 28, 1973, Judgment in this action
in favor of plaintiffs and against defendant was filed and
entered by the Clerk of the Court. A copy of said Judgment
is appended hereto as Exhibit A. After a brief prefatory
declaration, the Judgment recites:

"ORDERED and ADJUDGED that summary judgment
is granted in favor of the plaintiffs and the
defendant Franklin National Bank will pay the
amount by which Roosevelt Capital Corporation
is indebted to the United States on the judgment
entered on August 3, 1966, in Civil Action No.
65 Civ 162 in the Southern District of New York.
This amount will include the principal amount of
that judgment, \$157,229.17, plus interest to
date, so long as the total amount of this award

does not exceed the total of the sums for which Franklin National Bank has been found liable here (i.e., \$160,000 + \$78,000 + \$67,000 = \$305,000), together with interest and costs."

(3) It is respectfully submitted that the Judgment entered herein (i) omits recitation of the amount of interest accrued and due on the principal amount of the judgment of the UNITED STATES against Roosevelt Capital Corporation in 65 Civ. -162, Southern District of New York; (ii) omits express inclusion and recitation of the amount of interest accrued and due on the principal amount of the funds of Roosevelt Capital Corporation for which defendant FRANKLIN NATIONAL BANK has been found liable here (\$305,000) from at least May 26, 1964; and (iii) omits express direction to defendant FRANKLIN to pay to the Receiver of Roosevelt Capital Corporation ("RCC"), upon payment to plaintiffs of the principal amount of the UNITED STATES' judgment against RCC plus interest, the balance of all funds of RCC for which defendant has been found liable here.

(4) As set forth in the accompanying memorandum of law, liability for pre-judgment interest on an adjudicated debt in a Federal court action is governed by the law of the forum, as is the rate and method of computation. Section 5001(a) of the New York Civil Practice Law and Rules establishes that in New York,

"Interest shall be recovered upon a sum awarded because of a breach of performance of a contract, or because of an act or omission depriving or otherwise interfering with title to, or possession or enjoyment of, property"

It is submitted that, in this action against FRANKLIN NATIONAL BANK to recover corporate deposits of Roosevelt Capital Corporation, a determination and award of those sums - \$305,000- is within the purview of this provision.

(5) Section 5001(b), C.P.L.R., provides in pertinent part that "[i]nterest shall be computed from the earliest ascertainable date the cause of action existed

... Upon the undisputed facts found by the Court here, as to the entire amount of \$305,000 for which defendant is liable, it is submitted that that date is May 26, 1964, the date defendant FRANKLIN ostensibly closed the account of Roosevelt Capital Corporation.

(6) The omission of interest on the award of \$305,000, if not corrected, could result in the windfall retention by defendant of substantial sums owed the estate of Roosevelt Capital Corporation. It is submitted that correction of the omission may be accomplished consistent with Rule 58 of the Federal Rules of Civil Procedure by express inclusion of interest on that sum from May 26, 1964 to date and computation and recitation of that amount in the Judgment - either by the Court or by the Clerk subject to the Court's approval.

(7) Similarly, the omission of recitation of the actual amount of interest due on the Judgment of the UNITED STATES against Roosevelt Capital Corporation may be corrected by computation and recitation of that amount in the Judgment by either the Court or the Clerk subject to the Court's approval.

(8) The necessity of such judicial computation and recitation of sums certain in the judgment for enforcement and collection is already apparent in this action. Defendant on December 7, 1973 filed a notice of appeal herein and, to stay execution by plaintiffs, filed a supersedeas bond ostensibly pursuant to Rule 62(d) of the Federal Rules of Civil Procedure. The bond, which is subject to approval by the Court, is sufficient surety for no more than the principal amount of the award against defendant, \$305,000. Defendant's liability, however, includes simple interest of 6% computed from May 26, 1964 to November 28, 1973, or \$174,307.50, for a total award of \$479,307.50. The supersedeas bond is, therefore, substan-

tially inadequate and should be disapproved by the Court, and the Judgment's omission of interest should be corrected.

(9) Finally, although the Judgment expressly directs payment by defendant to plaintiffs "of the amount by which Roosevelt Capital Corporation is indebted to the United States," "\$157,229.17, plus interest to date," it omits an express direction to defendant to pay the balance of the total of the sums for which FRANKLIN has been found liable here. The balance of the corporate deposits of Roosevelt Capital Corporation, with interest to date, should properly be paid to the Receiver of that corporation, plaintiff MORTIMER TODEL, in accordance with this Court's decision and with the order of the District Court for the Southern District of New York appointing the Receiver and investing him with the power to collect the funds, assets and property of the debtor corporation.

(10) Plaintiff UNITED STATES OF AMERICA joins with the Receiver in applying for correction of the Judgment to expressly direct payment to the Receiver of all funds due Roosevelt Capital Corporation in anticipation of a judicial award of commissions or fees and expenses to the Receiver. Were the recovered assets of the corporation to amount to no more than the precise amount due the UNITED STATES on its judgment against Roosevelt Capital Corporation with interest, the practical consequence of an award of receiver's commissions, fees or expenses from such limited recovered assets of the estate would be to unjustifiably reduce the recovery of the UNITED STATES and unjustly enrich defendant FRANKLIN NATIONAL BANK.

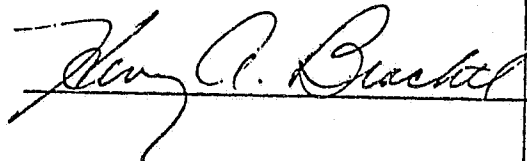
(11) For the foregoing reasons, it is respectfully submitted that the omissions of the Judgment entered herein on November 28, 1973 should be corrected to (i) recite the interest accrued and due on the amount of the judgment of the UNITED STATES against Roosevelt Capital Corporation,

(ii) include and recite the interest accrued and due on the principal amount for which defendant has been found liable here from May 26, 1974, and (iii) expressly direct the payment to the Receiver of the balance of the sums for which defendant is liable upon payment to plaintiffs of the amount necessary to satisfy the UNITED STATES' judgment against Roosevelt Capital Corporation with interest.

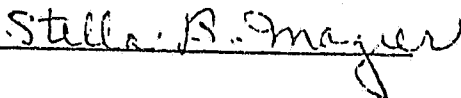
(12) Alternatively, it is submitted that the Judgment entered herein should be altered or amended pursuant to Rule 59(e), F.R.Civ.P., in the manner above described.

(13) In either event, your deponent prays that the Court shall grant such other and further relief as to the Court shall seem just and proper.

(14) A proposed form of corrected, or altered or amended Judgment is appended hereto as Exhibit B.



Sworn to before me this
10th day of December, 1973.



STELLA S. MAGIER
Notary Public, State of New York
No. 24-4501684
Qualified in Kings County
Commission Expires March 30, 1975

574a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

★ NOV 28 1973 ★

TIME A.M. _____

P.M. _____

UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver
of the funds, assets and pro-
perty of Roosevelt Capital
Corporation,

JUDGMENT

67 C 439

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendants.

A Memorandum of Decision and Order of Honorable Leonard P. Moore, United States Circuit Judge (sitting by designation), having been filed on November 28, 1973, granting plaintiffs' petition for summary judgment, it is

ORDERED and ADJUDGED that summary judgment is granted in favor of the plaintiffs and the defendant Franklin National Bank will pay the amount by which Roosevelt Capital Corporation is indebted to the United States on the judgment entered on August 3, 1966, in Civil Action No. 65 Civ 162 in the Southern District of New York. This amount will include the principal amount of that judgment, \$157,229.17, plus interest to date, so long as the total amount of this award does not exceed the total of the sums

EXHIBIT A

575a

for which Franklin National Bank has been found liable here
(i.e., \$160,000 + \$78,000 + \$67,000 = \$305,000), together with
interest and costs.

Dated: Brooklyn, New York.
November 28, 1973



Clerk

EXHIBIT A, continued

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver, of the
funds, assets and property of
Roosevelt Capital Corporation,

PROPOSED CORRECTED
JUDGMENT

Plaintiffs,

Civil Action

-against-

No. 67 C 439

FRANKLIN NATIONAL BANK,

Defendant.

A Memorandum of Decision and Order of Honorable Leonard P. Moore, United States Circuit Judge (sitting by designation), having been filed on November 28, 1973, granting plaintiffs' petition for summary judgment, it is

ORDERED and ADJUDGED that summary judgment is granted in favor of plaintiffs. Defendant FRANKLIN NATIONAL BANK is found liable to plaintiffs here for \$479,307.50, including the principal amount of \$305,000 plus interest from May 26, 1964 to date, i.e. \$174,307.50, plus interest and costs, to be distributed as follows: (a) \$242,909.61, including the principal amount of \$157,229.17, plus interest from August 3, 1966 to date, i.e., \$74,222.38, together with interest and costs, to plaintiffs to be applied in payment of the amount by which Roosevelt Capital Corporation is indebted to the United States on the judgment entered on August 3, 1966 in Civil Action No. 65 Civ 162 in the Southern District of New York; and (b) the balance of \$286,398.89 together with interest to plaintiff Mortimer Todel as Receiver of the funds, assets and property of Roosevelt Capital Corporation.

Dated: Brooklyn, New York
November 28, 1973

577a

**Affidavit of Mortimer Todel, Receiver of the
Assets, Funds and Property of Roosevelt
Capital Corporation, Sworn to
December 10, 1973**

10

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA and MORTIMER	:	
TODEL, as Receiver of the funds, assets	:	
and property of Roosevelt Capital	:	
Corporation,	:	AFFIDAVIT
	:	<u>67-C-439</u>
Plaintiffs,	:	
	:	
- against -	:	
	:	
FRANKLIN NATIONAL BANK,	:	
	:	
Defendant.	:	

----- x

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

MORTIMER TODEL, being duly sworn, deposes and
says that:

(1) I am the Receiver of the assets, funds and
property of Roosevelt Capital Corporation by order and
appointment of the United States District Court for the
Southern District of New York, Levett, J. dated March 5, 1965.
A copy of the order and appointment, made in the action of
UNITED STATES v. Roosevelt Capital Corporation and Ray
Pierson, S.D. N.Y. No. 65 Civ. 162, is appended hereto as
Exhibit A.

(2) I make this affidavit in support of the
application of plaintiffs for an order correcting the Judg-

ment entered herein to remedy certain omissions pursuant to Rule 60(a) of the Federal Rules of Civil Procedure or, in the alternative to alter or amend the Judgment pursuant to Rule 59(e), F.R. Civ. P.

(3) The accompanying affidavit of Henry A. Brachtl, Assistant United States Attorney, and the accompanying memorandum of law set forth the corrections for inclusion and recitation in the Judgment of the amounts of interest accrued and due on the respective principal funds of (i) the Judgment of the UNITED STATES against Roosevelt Capital Corporation, and (ii) the funds of Roosevelt Capital Corporation for which defendant FRANKLIN NATIONAL BANK has been found liable here from at least May 26, 1964. I concur in and adopt the statements of the affidavit and memorandum in support of the correction, or the alteration, or amendment of the Judgment to include and recite both amounts.

(4) It is also respectfully submitted that the Judgment should be corrected, or amended, or altered, to expressly provide that, upon the payment to plaintiffs of the principal amount of the Judgment of the UNITED STATES against Roosevelt Capital Corporation plus interest to date, defendant FRANKLIN NATIONAL BANK shall pay the balance of all funds to Roosevelt Capital Corporation for which defendant has been found liable here.

(5) Such express directive will not only re-

flect this Court's final determination and order, but will effectuate the order of the District Court, Southern District of New York, by which this Receiver was appointed.

Specifically, that order provides, in paragraph 4:

"That any and all persons having any of the said funds, assets or property of Roosevelt Capital Corporation in their possession, control or custody shall transfer and deliver the same to the said Receiver and shall execute such instruments of transfer or assignment as may be requested by the Receiver to effect such transfers."

(6) This Court having determined that defendant, FRANKLIN NATIONAL BANK is liable in this action for the principal amount of \$305,000.00, the corporate deposits of Roosevelt Capital Corporation, that amount, plus interest to date, less the amount paid to plaintiffs to satisfy the Judgment of the UNITED STATES against Roosevelt Capital Corporation, should be paid to your deponent as Receiver of the funds, assets and property of Roosevelt Capital Corporation.

(7) For the foregoing reasons, it is submitted that the Judgment entered herein should be corrected or, alternatively, altered or amended, in the manner set forth above and the Court should grant such other and further relief as to it shall seem just and proper.

SWORN TO BEFORE ME

THIS 10th DAY OF

December 1973

Mortimer Todell
MORTIMER TODEL, Receiver of the funds,
assets and property of Roosevelt
Capital Corporation

Philip J. Nathan
PHILIP J. NATHAN
Notary Public, State of New York
No. 31-2851500
Qualified in New York County
Term Expires March 30, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

582a

UNITED STATES OF AMERICA,

Plaintiff,

-v-

ROOSEVELT CAPITAL CORPORATION and
RAY PIERSON,

Defendants.

ORDER

65 Civ. 162

A motion having been made by the plaintiff United States of America for the appointment of a Receiver pendente lite of all of the funds, assets, and property of defendant Roosevelt Capital Corporation, a New York corporation, licensed as a Small Business Investment Company by the United States Small Business Administration, and for a preliminary injunction, and said motion having been brought on by Order to Show Cause and Temporary Restraining Order signed by the Honorable David M. Edelstein, U.S.D.J., on January 19, 1965, and the plaintiff having appeared by Robert M. Morgenthau, United States Attorney for the Southern District of New York (Alan G. Blumberg, Assistant U. S. Attorney, and Bernard Kulik, Attorney, Small Business Administration, of Counsel), and the defendants having appeared by their attorneys, Saxe, Bacon and Bolan, Esqs. (John F. Lang, of Counsel), and the parties having stipulated by their attorneys before the Honorable Inzer B. Wyatt, on February 18, 1965, (i) that the defendants would produce all books and records of Roosevelt Capital Corporation, on or before February 25, 1965, (ii) that the

deposition of defendant Pierson would be taken on February 19, 1965 and (iii) that if plaintiff was not entirely satisfied, defendants would consent to the granting of the plaintiff's motion, and said motion having come on for hearing before me on March 2, 1965, and, pursuant to said stipulation, the defendants having consented to the granting thereof,

NOW, THEREFORE, on motion of Robert M. Morgenthau, United States Attorney for the Southern District of New York, it is

ORDERED AND DECREED:

1. That plaintiff's motion for the appointment of a Receiver pendente lite of all the funds, assets, and property of Roosevelt Capital Corporation, hereby is granted, and that Mortimer Todel, Esq. of 32 East 57 Street, New York, N.Y. 10022 is hereby appointed as such Receiver with all the powers of a Receiver appointed pursuant to the provisions of 15 U.S.C. §681c(b), Rule 69 of the Federal Rules of Civil Procedure, and §§6401-05 of the Civil Practice Law and Rules of the State of New York, and all powers of a Receiver incidental to any of the foregoing provisions.

2. That said Receiver shall within five (5) days hereof file with this Court a bond in the penal sum of \$5,000.00, approved by the Clerk of this Court, conditioned on his faithful performance of his duties as Receiver herein, his truthful accounting for any and all monies coming into his possession as such Receiver, and his faithful discharge of the duties of such office.

3. That on the filing of such bond, the said Receiver shall take possession, control and custody of all funds, assets, and property of Roosevelt Capital Corporation wherever located, including but not limited to business records, real estate, personalty, cash, investments, claims and choses in action, and shall take all such action as may be deemed necessary or advisable to collect, preserve and protect such assets and to enforce and recover upon any such claims and choses in action by the institution of appropriate legal proceedings or otherwise.

4. That any and all persons having any of the said funds, assets or property of Roosevelt Capital Corporation in their possession, control or custody shall transfer and deliver the same to the said Receiver and shall execute such instruments of transfer or assignment as may be requested by the Receiver to effect such transfers.)

5. That defendant Pierson and defendant Roosevelt Capital Corporation, its officers, agents and employees and all persons acting in concert or in participation with the said defendants, shall be and hereby are enjoined during the pendency of this action from (i) concealing or destroying any of the business records of Roosevelt Capital Corporation, (ii) disbursing, handling, investing, conveying, converting, negotiating, or otherwise concealing, transferring or delivering any of the funds, assets, and property of Roosevelt Capital Corporation except in accordance with the directions of said Receiver,

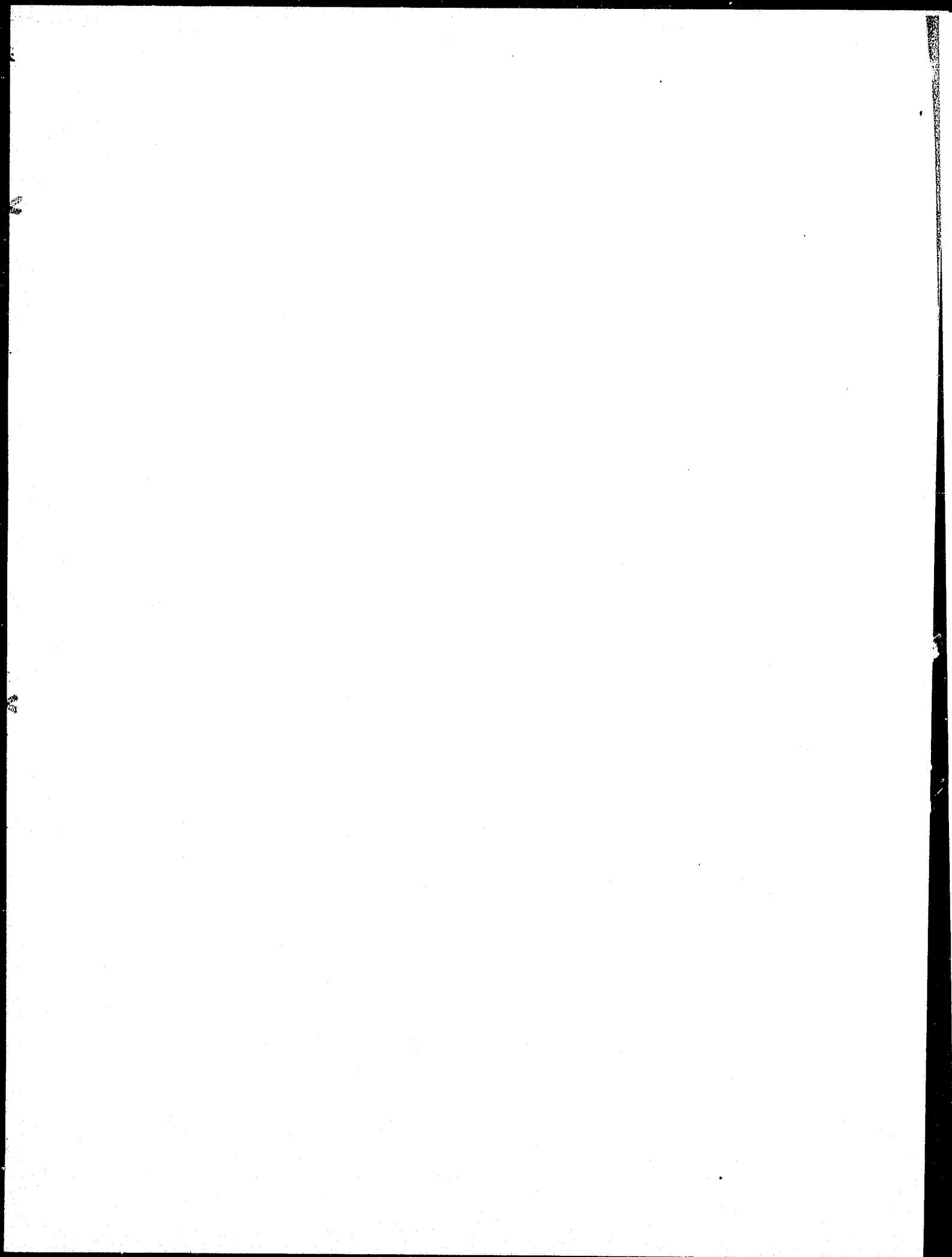
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and (iii) interfering in any manner whatsoever with the said Receiver in the discharge of his duties.

Dated: New York, New York

March 5th , 1955.

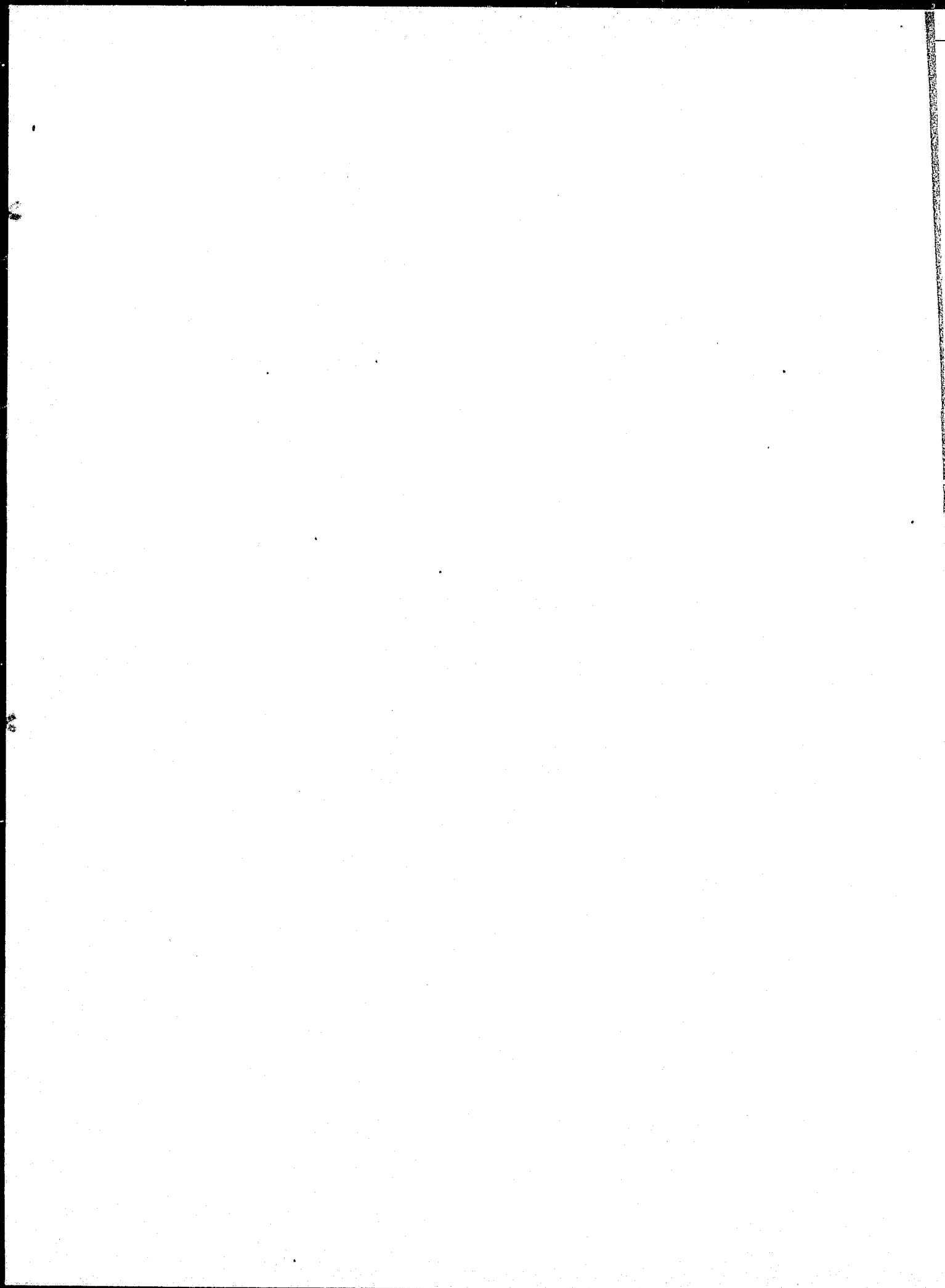
/s/ Richard H. Levat
U. S. D. J.



587a

**DEFENDANT'S PAPERS IN OPPOSITION TO
MOTION TO CORRECT JUDGMENT OF NOVEMBER
28, 1973, OR, IN THE ALTERNATIVE, TO ALTER OR
AMEND JUDGMENT, Filed on December 26, 1973**

**Affidavit of Julius Berman, Sworn to
December 26, 1973**



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, and
MORTIMER TODEL, as Receiver of
the funds, assets and property of
ROOSEVELT CAPITAL CORPORATION,

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.
-----X

AFFIDAVIT

Civil Action
No. 67 C 439

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

JULIUS BERMAN, being duly sworn, deposes and
says:

1. I am a member of the firm of Kaye, Scholer,
Fierman, Hays & Handler, the attorneys for the defendant
Franklin National Bank, and submit this affidavit in
opposition to plaintiffs' motion to correct the Judgment
pursuant to Rule 60(a) or, in the alternative, to alter
or amend the Judgment pursuant to Rule 59(e).

2. Under the guise of a seemingly minor
corrective motion, the plaintiffs are now attempting
to completely alter the thrust of this entire case
including the relief requested. Thus, instead of an
order and judgment as presently entered herein, providing
for \$157,000 plus interest (or approximately \$240,000) --
that being the amount necessary to satisfy the judgment
of the United States against Roosevelt Capital Corp. --
they are requesting via this motion that the judgment
be increased to the sum of \$305,000 plus interest, which,
according to plaintiffs' computation amounts to, as of
November 28, 1973, the sum of \$479,307.50.

3. To underscore the complete change of position on the part of plaintiffs, it is merely necessary to refer to the affidavit submitted by them in support of their motion for summary judgment (Bracht1 Affidavit, sworn to May 15, 1973), which concludes as follows:

"WHEREFORE, it is respectfully submitted that summary judgment in favor of plaintiff UNITED STATES OF AMERICA and against defendant FRANKLIN NATIONAL BANK should issue, awarding to plaintiff so much of the indebtedness of FRANKLIN NATIONAL BANK to Roosevelt Capital Corporation as shall satisfy the judgment of the UNITED STATES against Roosevelt Capital Corporation, with interest and costs."*

Thus, the order and judgment entered herein conform exactly to the relief requested in the summary judgment motion. At no time did plaintiffs allege or claim -- either in the complaint or in their motion papers -- that they were entitled to judgment over and above the amount due the United States as an unsatisfied judgment creditor of Roosevelt Capital Corp. And it goes without saying that such a claim was never briefed or argued by the parties.

4. The distinction between the type of judgment entered by this Court pursuant to its memorandum order and that requested by plaintiffs in this motion is more than simply formalistic; it is of concrete and major substance. It is one thing to lodge a claim on behalf of an unsatisfied judgment creditor for monies which were purportedly taken out of the debtor's account wrongfully; it is a horse of another color, however, to lodge a claim on behalf of a Receiver of a corporation -- over nine years after the event -- in which judgment is

*While the Receiver informally joined in the motion via a letter to the Court, dated May 17, 1973, the nature of the motion itself was never changed.

sought for sums of money ostensibly "looted" from the corporation by its sole stockholders.

Besides the obvious fact that, absent creditors, the stockholders of a corporation have the absolute right to "loot" their own corporation, the patent speciousness of this motion is highlighted by yet another rule of law. And that is, that any assets collected by the Receiver over and above that needed to pay creditors is given to the corporate stockholders. See N.Y.B.C.L. §1212(b). Consequently, what the plaintiffs are asking this Court to do is to rule that after the sole stockholders of the corporation "looted" the corporate accounts, the money should now be returned to the "looters." Such a contention is patently incredulous.

5. Moreover, the law is abundantly clear, that the Receiver cannot make any claims against third parties that the corporation itself could not make. As stated by Professor White:

"He [the receiver] may not recover in circumstances in which the corporation could not have maintained an action. Hence, a receiver cannot recover the value of shares fraudulently issued as fully paid for by the corporation with the consent of all the directors and shareholders. In such case the receiver, like the corporation is bound by an equitable estoppel." 4 White New York Corporations ¶ 1206.05[1] and cases cited therein.

Putting to the side for the moment questions of fact and law arising out of the closing transfer involving \$160,000, no one would argue that the corporation, after dissipating its own assets, could now come to the Bank and ask for another sum of money to compensate for its

own dissipation. Thus, it is crystal clear that plaintiffs' attempt to "correct" or "alter" the judgment has no basis in fact or law.*

6. Interestingly, plaintiffs' request to specify the interest due on the claim raises yet another point of law -- the discretion of the Judge under the particular circumstances of a case to dispense with interest altogether. See, e.g., Okeechobee County v. Nuveen, 145 F.2d 684 (8th Cir. 1944). In our situation, according to plaintiffs' own contention, had the Bank not debited the Roosevelt Capital account in the sum of \$160,000 to cover the two official checks, the money would have been dissipated anyway. After all, plaintiffs contend that once the new stockholders took control of the Roosevelt Capital assets, they "looted" everything down to the last penny. Thus, had the debit to the account not been made, the plaintiffs would have incurred the exact same loss without any opportunity to recompense themselves from the Bank. The happenstance of the above-mentioned debit enabled the plaintiffs to commence this action and obtain a judgment which they never could have done otherwise. Under the circumstances, as the Okeechobee decision demonstrates, this Court has ample discretion to dispense with interest altogether.

* As to plaintiffs' problem concerning the source of prospective commissions for the Receiver appointed at the request of the United States, that certainly is of no concern to defendant nor to this Court. Obviously, plaintiff United States has second thoughts as to the need for appointing a Receiver in a situation where the United States came into Court itself to protect its rights and refused to rely upon the Receiver.

7. This motion demonstrates what we respectfully submit to be a major error in the decision of this Court on the underlying summary judgment motion. Here we have a situation in which an action is commenced in 1967 -- three years after the transaction in question -- in which the complaint contains nary a word concerning the "subsequent transfers of funds." Extensive discovery is conducted and then, in 1973 -- nine years after the transaction in question -- a motion for summary judgment is filed in which, for the first time, the "subsequent transfers of funds" are raised as claims against the Bank. But even then, the request for relief, as above noted, is not changed. Furthermore, none of the testimony relied upon by the plaintiffs in support of the "new claims" was taken in this case; all of the testimony was excerpted from a deposition taken in a case entitled "United States v. Roosevelt Capital Corp. and Ray Pierson," Civil Action No. 65 Civ. 162, in which Franklin National Bank was not even a party. Thus, it cannot even be argued that lack of objection at the deposition somehow might be construed as "implied consent," which would anyway be contrary to the Federal Rules governing the taking of depositions.

Moreover, the defendant Franklin National Bank engaged in no discovery whatsoever, whether by way of depositions of the Roosevelt Capital stockholders or otherwise, in connection with the "subsequent transfers," nor could it, since these claims were not in the case at the time.

In this posture and faced for the first time, on the summary judgment motion with these "new claims,"

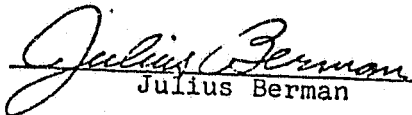
the Bank protested against this tactic clearly and unequivocally in its papers in opposition to the motion, pointing out specifically that these "new claims" were not, and never were, in this case. Despite this undisputed sequence of events and the Bank's refusal to deal on the merits with "new claims" not contained in the original complaint and concerning which no discovery had been taken, the Court, in its memorandum order held that there was "implied consent" under Rule 15(b) to the interposition of these "new claims." It would, we submit, be difficult to conceive of a clearer case of "express objection," rather than "implied consent."

In any event, and wholly apart from the foregoing, there is another, totally independent basis for refusing to allow the interposition of these "new claims" at this time. The statute of limitations is a complete and absolute bar to the "new claims." The legal analysis for this contention is simple. The claims, if they ever in fact existed, arose in 1964 (note plaintiffs' request for interest on these claims from May 26, 1964). Plaintiffs have attempted to interpose these claims in their motion for summary judgment -- nine years after the event. Whether the three-year or six-year limitations period applies, the result is the same.

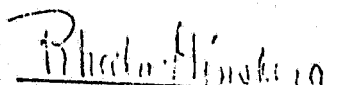
Needless to say, the defense of the statute of limitations was neither asserted in the Bank's answer nor in its papers in opposition to summary judgment. Since the "new claims" were not contained in the complaint, no defense thereto could be asserted. And, in any event,

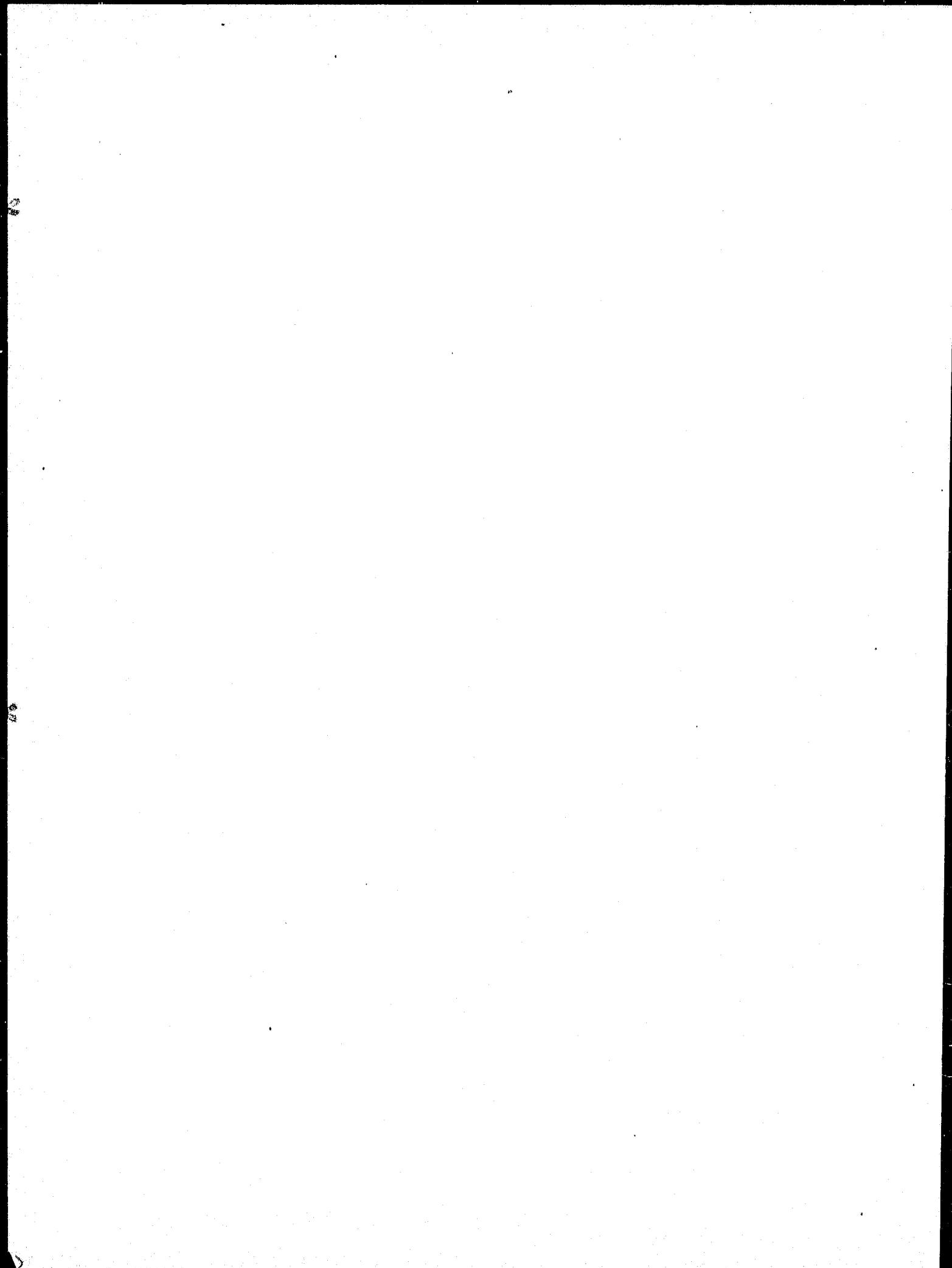
at that stage in the proceedings, limitations would not have been a bar. As to the summary judgment motion, the plaintiffs never suggested that these were, in fact, "new claims." At all times they proceeded as if the action, as initially brought, included these claims. When it was pointed out in our opposing papers that these claims had never been asserted prior to the motion, the plaintiffs refused to reply to this contention; they simply ignored it in their reply papers. No attempt at any time was made to amend the complaint. Thus, it stands to reason that the burden of the Bank's opposition in its papers to these claims would be to demonstrate that they were not contained in plaintiffs' complaint and, in any event, were stricken from the case by Judge Weinstein's Order of November 29, 1967. The first reference made to an amendment, or, for that matter, to Rule 15(b) is contained in this Court's memorandum order of November 28, 1973.

8. From all of the foregoing, it is respectfully submitted that there is no basis whatever, either factual or legal, for modification of the judgment upwards, as requested by plaintiffs. If anything, the motion has highlighted the fact that the "new claims" should never have been considered by this Court, nor should plaintiffs be entitled to any interest on the original claim.


Julius Berman

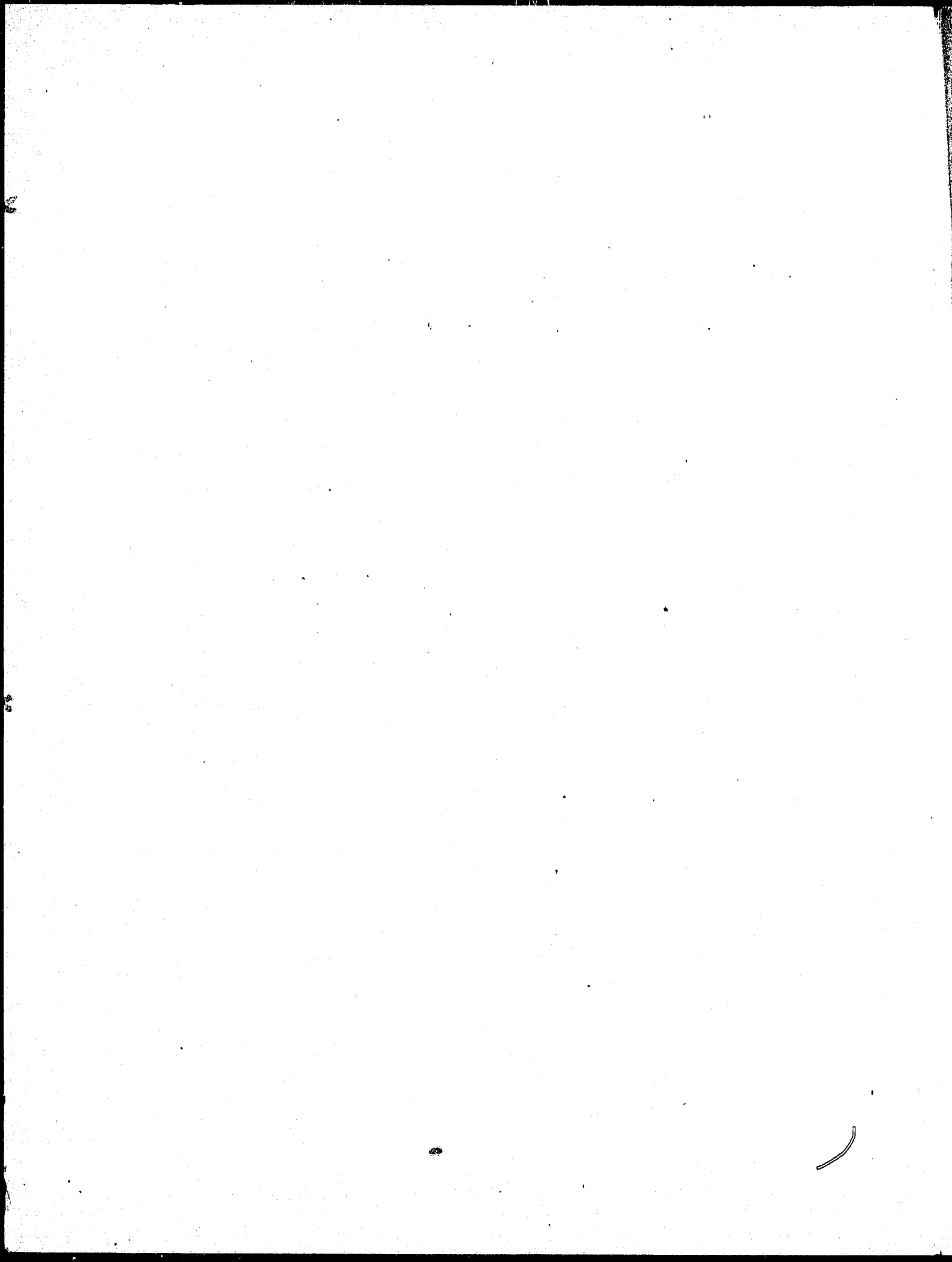
Sworn to before me this
26th day of December, 1973.


Notary Public
RHODA GINSBERG
NOTARY PUBLIC, State of New York
No. 31-14-00030
Qualified in New York County



597a

**Memorandum Decision and Order (Moore, Senior
U. S. Circuit Judge, Sitting by Designation),
Dated May 9, 1974 and Filed on May 10, 1974**



599a
LEGAL FILE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver of the
funds, assets and property of
Roosevelt Capital Corporation,

Plaintiffs,

-against-

67-C-439

FRANKLIN NATIONAL BANK,

Defendant.

-----X
Appearances:

Henry A. Brachtl, Assistant United States Attorney,
Brooklyn, N. Y. (Hon. Robert A. Morse, United
States Attorney for the Eastern District of
New York, Brooklyn, N. Y.), for plaintiff
United States of America.

Mortimer Todel, plaintiff pro se.

Julius Berman, New York, N. Y. (Kaye, Scholer,
Fierman, Hays & Hardler, New York, N. Y.),
for defendant.

* * *

Before: Hon. Leonard P. Moore,
Senior United States Circuit Judge
(sitting by designation)

-1-

MOORE, Circuit Judge (sitting by designation):

Upon an application by plaintiffs to correct, with respect to interest calculation, the judgment entered herein dated November 28, 1973, granting summary judgment in favor of plaintiffs for sums improperly paid by Franklin National Bank (Franklin) out of funds of Roosevelt Capital Corporation (RCC) and upon defendant's and application to alter or amend said judgment, opposition thereto, the decision and the judgment entered thereon are modified and amended as follows:

(1) The paragraph of the original opinion appearing on pages 8 and 9 reading as follows:

I believe, however, that on this motion for summary judgment I may properly treat the question of the subsequent transfers of funds from the RCC account at Hanover Square as having been raised by implied consent under Rule 15(b) of the Federal Rules of Civil Procedure. The papers before the Court do present the question of how Franklin allowed Olanow and Pierson to transfer RCC funds to the unrelated accounts of Trans-World Theatricals, Inc. and United Film World as well as the final transfer of funds from the RCC account to Pierson after he had been requested to close the account. Copies of notes which Mastronardo kept so that he could keep track of the rapid shuffling of funds in and out of these accounts are before the Court, as are the bank documents reflecting the opening of these accounts and the ledger cards for each account. In addition, Franklin has admitted the genuineness of all of these documents. Under these circumstances I deem the complaint amended to conform to the proof. Fletcher v. Nostadt, 205 F.2d 896, 897 (4th Cir. 1953); Rossiter v. Vogel, 134 F.2d 908, 912 (2d Cir. 1943); Bucky v. Sebo, 208 F.2d 304, 305 (2d Cir. 1953); Bradford Audio Corp. v. Pious, 392 F.2d 67 (2d Cir. 1968).

is stricken, and there is substituted therefor the following:

-2-

The limits of the recovery sought have been stated in the affidavit submitted by the United States in support of this motion for summary judgment, which concludes as follows:

WHEREFORE, it is respectfully submitted that summary judgment in favor of plaintiff UNITED STATES OF AMERICA and against defendant FRANKLIN NATIONAL BANK should issue, awarding to plaintiff so much of the indebtedness of FRANKLIN NATIONAL BANK to Roosevelt Capital Corporation as shall satisfy the judgment of the UNITED STATES against Roosevelt Capital Corporation, with interest and costs. (emphasis added)

Although the Receiver, Mortimer Todel, joined the motion for summary judgment, neither he nor the government sought any relief or recovery other than that necessary to satisfy the government's judgment against RCC.

The government's claim that its recovery will be improperly reduced by the amount of the Receiver's commissions, fees and expenses if the Receiver is not permitted to recover the \$145,000 involved in these two claims is not persuasive. Since the Receiver here has clearly left the burden of recovering the funds, assets and properties of RCC to the sole creditor, the United States, the amount of his commissions, fees and expenses will be negligible. I, therefore, conclude that the only question properly before me on this motion for summary judgment is that which limits plaintiffs' claim to the amount necessary to satisfy the judgment of the United States against Roosevelt Capital Corporation with interest and costs.

(2) The section of said decision entitled "IV. THE REMAINING TRANSACTIONS" is stricken.

(3) The last paragraph in the section entitled "V. CONCLUSION" is modified to read as follows:

Summary judgment for plaintiffs is granted, awarding to plaintiffs such amount as shall satisfy the judgment of the United States against Roosevelt Capital Corporation with interest and costs, said judgment having been entered on August 3, 1966, in an action, United States v. Roosevelt Capital Corp., 65 Civ. 162 (S.D.N.Y.) in favor of the United States in the sum of \$157,229.17 plus interest from February 8, 1964.

Judgment ordered pursuant to opinion dated November 28, 1973 vacated; judgment ordered to be entered in accordance with this modified opinion.

DISCUSSION

In my previous opinion I treated sums paid out of RCC's account, namely, \$67,000 and \$78,000 as involved in this lawsuit. Upon further consideration, I am convinced that I was mistaken and they are not properly within the scope of this case.

The motion before me was for summary judgment in which plaintiffs specifically asked for judgment "awarding to

-4-

plaintiff [sic] so much of the indebtedness of FRANKLIN NATIONAL BANK to Roosevelt Capital Corporation as shall satisfy the judgment of the United States against Roosevelt Capital Corporation, with interest and costs." This was the extent to which plaintiffs claimed the right to reimbursement and this was the only loss suffered by them as a result of defendant's action in recouping itself out of RCC's funds for the official checks so ill-advisedly given to Pierson and Olanow. The complaint which initiated this lawsuit sought only to vindicate the position of the United States as a judgment creditor. Full relief as sought is granted by directing that judgment for \$157,239.17 with interest and costs from February 8, 1964, be entered.

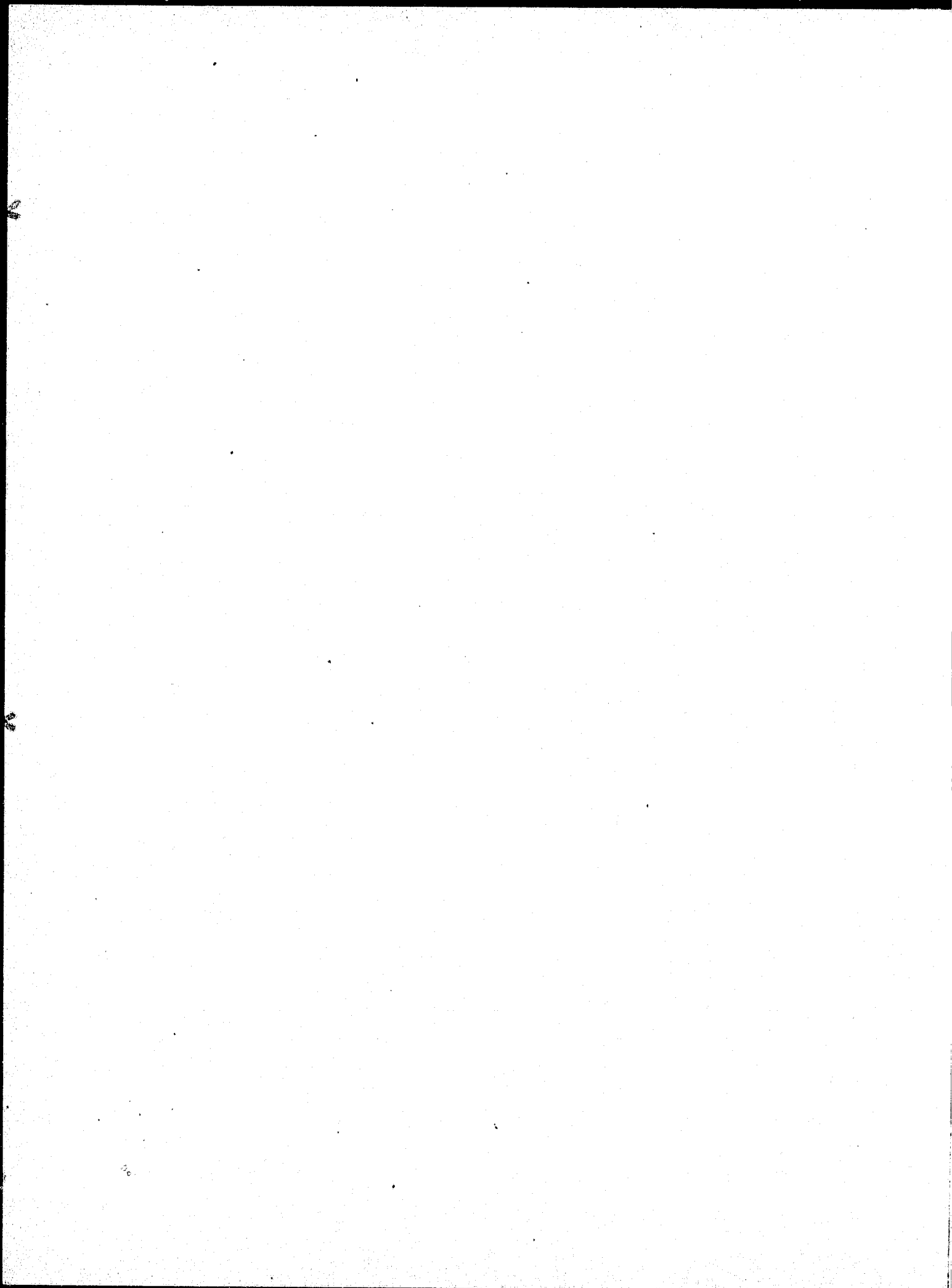
The \$67,000 and \$78,000 items are not in issue.

It is so ordered.

Brooklyn, N. Y.

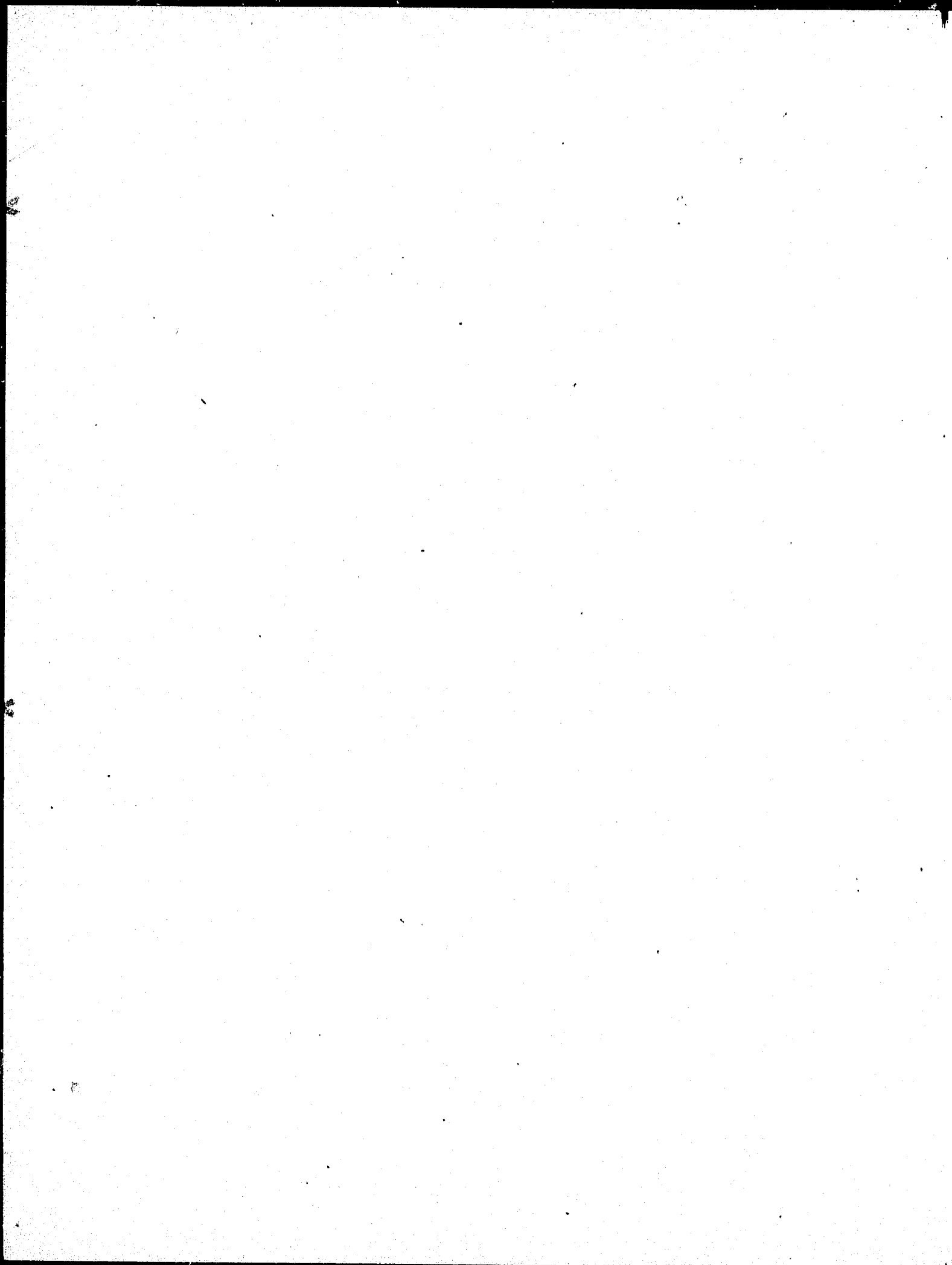
Dated: May 9, 1974

(Hon. Leonard P. Moore)
Senior United States
Circuit Judge,
sitting by designation



605a

Judgment for Plaintiffs, Filed on May 10, 1974



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

607a

UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver of the
funds, assets and property of
Roosevelt Capital Corporation,

Plaintiffs,

- against -

FRANKLIN NATIONAL BANK,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

★ MAY 10 1974 ★

TIME A.M. _____
P.M. _____

JUDGMENT

67 C 439

FILED

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A memorandum of decision and order of Honorable

Leonard P. Moore, United States Circuit Judge, (sitting by
designation), having been filed on May 10, 1974 vacating and
modifying the memorandum and decision filed on November 28, 1973,
and vacating and amending the judgment pursuant thereto dated and
filed November 28, 1973, it is

ORDERED and ADJUDGED that the judgment entered herein
on November 28, 1973 is vacated and it is further

ORDERED and ADJUDGED that summary judgment in favor
of plaintiffs is granted and the plaintiffs are awarded such amount
as shall satisfy the judgment of the United States of America against
Roosevelt Capital Corporation with interest and costs, said judgment
having been entered on August 3, 1966, in/action, United States v.
Roosevelt Capital Corp., 65 Civ. 162 (S.D.N.Y.) in favor of the
United States in the sum of \$157,229.17 plus interest from
February 8, 1964.

Dated: Brooklyn, New York
May 10, 1974

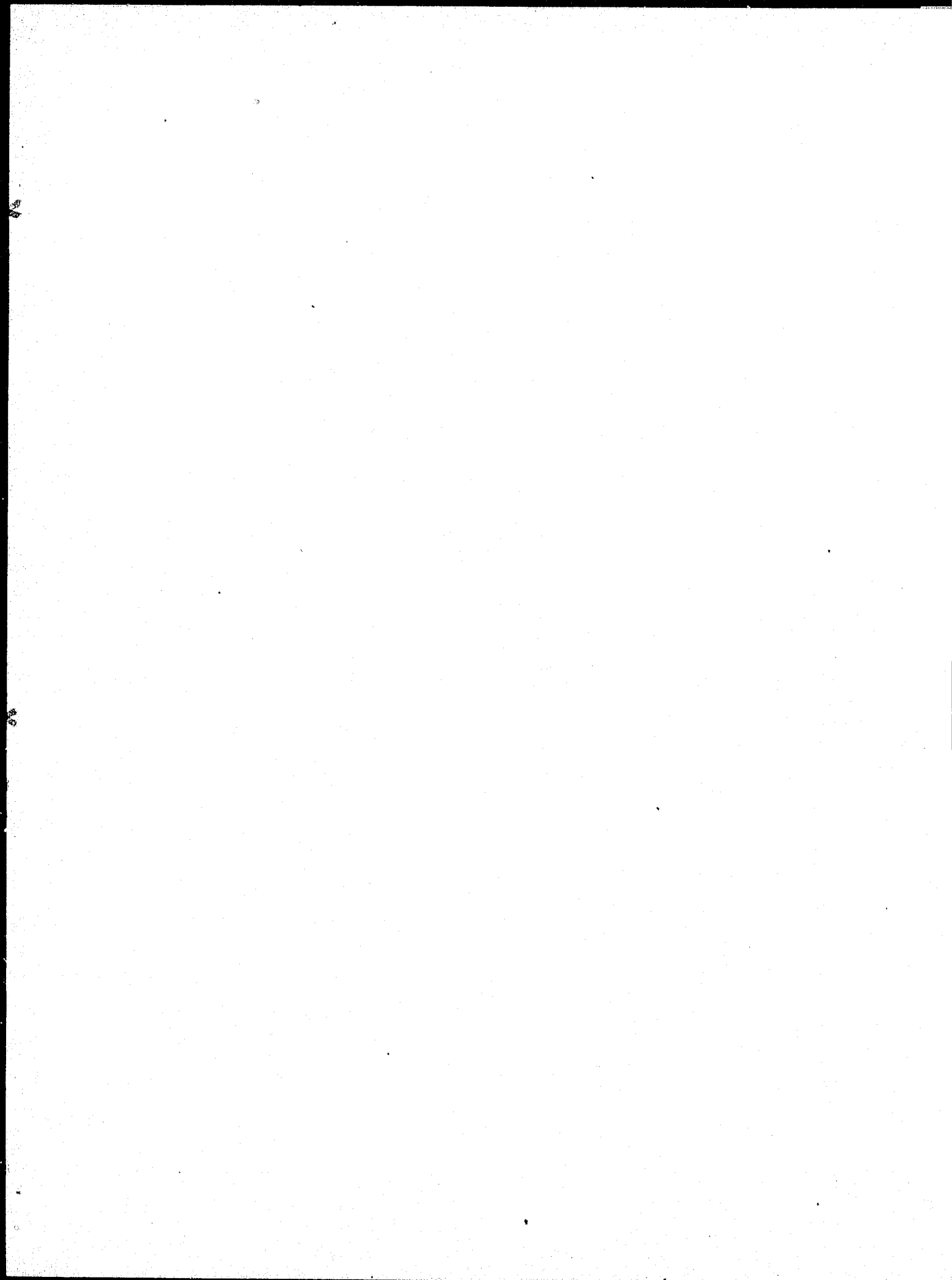
Lewis Ornel

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609a

**Defendant's Notice of Appeal, Filed on June 7, 1974,
from Memorandum Decision and Order and
Judgment of May 10, 1974**



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

JUN 7 4 10 PM '74
FILED
CLERK IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.
EASTERN DISTRICT
OF NEW YORK
JUN 7 1974 ★

-----x
UNITED STATES OF AMERICA and
MORTIMER TODEL, as Receiver of
the funds, assets and property
of Roosevelt Capital Corporation,

Plaintiffs,

-against-

FRANKLIN NATIONAL BANK,

Defendant.
-----x

TIME A.M.....
P.M.....

NOTICE OF APPEAL

67 Civ. 439

S I R S :

NOTICE is hereby given that Franklin National Bank, the defendant above named, hereby appeals to the United States Court of Appeals for the Second Circuit from a memorandum decision and order of this Court, by the Hon. Leonard P. Moore, Senior United States Judge (sitting by designation), dated May 9, 1974 and entered on May 10, 1974, granting plaintiffs judgment for \$157,229.17, together with interest and costs, and modifying a previous opinion and order and which vacates a previous judgment, said previous opinion and order and judgment having all been entered on November 28, 1973, and from the judgment dated and entered on May 10, 1974 pursuant to the aforesaid memorandum decision and order, and defendant Franklin National Bank hereby appeals from each and every part of the said May 10, 1974 memorandum decision and order and judgment and from the whole thereof.

Dated: New York, New York
June 7, 1974

Yours, etc.,

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER
Attorneys for Defendant

By Julius Berman
A Member of the Firm

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TO: ;

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Plaintiff Pro Se
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New York, New York 10020

1 COPY
Service of 2 copies of the
within Appendix is hereby
admitted this 12th day of
Aug. 1974

Signed Mortimer Todel (JS)

Attorney for Plaintiff - Appellees

1 COPY
Service of 2 copies of the
within Appendix is hereby
admitted this 12th day of
Aug. 1974

Signed Roseanne De Mals

Attorney for Appellees